

COMMISSIONER WATLING: Appearances please.

MR J.E. SWALLOW: SWALLOW, J.E., A.M.I.E.U.

MR. A. CAMERON: If the commission pleases, ANDREW CAMERON from the Tasmanian Chamber of Commerce and Industry.

5 COMMISSIONER WATLING: Good. Thank you.

MR T. CURTAIN: And TERRY CURTAIN from the National Meat Association Australia, Tasmanian Division.

COMMISSIONER WATLING: Thanks, Mr Curtain. I see Mr Curtain did make it at 9.30, Mr Cameron.

10 MR CAMERON: Yes. Yes, he was here. Commissioner, the parties have had some discussions before the hearing this morning. There are certain points that we still need to continue discussions with and at this stage it would be our submission that we adjourn to go into conference with a report back later this morning, probably at 12 noon, for a report back as to the progress of those discussions. Hopefully, by that
15 stage, the parties can come to a position where there may be a consent document or if not we can notify the commission that certain things need to be done or arbitrated.

COMMISSIONER WATLING: Good. Mr Swallow, is that your understanding?

MR SWALLOW: That's my understanding, sir, yes.

COMMISSIONER WATLING: Is that your understanding, Mr Curtain, too?

20 MR CURTAIN: Yes, sir.

COMMISSIONER WATLING: Righto. Well, we'll adjourn to midday. Thank you.

INTO CONFERENCE

COMMISSIONER WATLING: Right. Who shall I turn to for a report?

MR SWALLOW: We -

25 COMMISSIONER WATLING: Mr Swallow.

MR SWALLOW: Thank you. The - well three years have gone past and there is still the same thing. I'd like arbitration on the 38 hour week, the operative date, the minimum wage, the MRAs and apprentice percentages.

COMMISSIONER WATLING: Right. Do you want a decision now?

30 MR SWALLOW: Yes.

COMMISSIONER WATLING: All right. So you can't reach any agreement at all?

MR CAMERON: No.

COMMISSIONER WATLING: Righto.

MR CAMERON: Commissioner, as far as that's concerned -

35 COMMISSIONER WATLING: This is not just a tactic is it?

MR CAMERON: No, no, commissioner. We did come here today with, and we had indicated to Mr Swallow before today, various points within the proposed amendments to the award that cause concern to the employers, some more concern than others of course. And it was hoped that either before today, and we have made attempts to
5 contact each other before today, to get together and discuss them, but we were unable to, but at least hoped today that we might be able to sort of have some agreement on various things, a bit of give and take from both sides. Unfortunately the applicant hasn't seen fit to sort of back down from any of the positions in the award. And
10 unfortunately that's the situation we've come to despite the discussions that have taken place here this morning and with the assistance of the commission, before we went on record this morning, and some of the indications that he made to the parties.

That being the case we have not come today with the witnesses that we now think will be required to provide the evidence in relation to the points in dispute and as such that we would therefore seek an adjournment at this stage. I think from the
15 applicant's point of view that may be appropriate as well, that if these matters are going to go into a matter of evidence and argument, that the applicant would need to bring their own witnesses to counter any evidence that the National Meat Association or the Tasmanian Chamber of Commerce and Industry might bring before this commission.

20 COMMISSIONER WATLING: So what do you think

MR CAMERON: I think at this stage, probably appropriate that we do work out a timetable. So -

COMMISSIONER WATLING: Yes, but what do you think's in dispute?

MR CAMERON: In dispute, would be the change in hours.

25 COMMISSIONER WATLING: So you're opposed to the reduction of 38 hour week?

MR CAMERON: Yes, we would have to indicate that's our position at this stage. Unfortunately, from our point of view, the award as it currently stands has the two sections: the small retail outlets and the supermarkets. Now the supermarkets are obviously in a different commercial situation than the small outlets. The applicant's
30 trying to bring the supermarket conditions across the board and apply to all employers, within the state, to impose upon them conditions and wages. For instance, as far as apprenticeship rates are concerned -

COMMISSIONER WATLING: Just stick with the hours at the moment. So you're opposed to the 38 hour week going in this award.

35 MR CAMERON: We were hoping to have other trade-offs if that was going to be a consented position. But if those other things aren't there to off-set the impost on the employers we would have to oppose it.

COMMISSIONER WATLING: So have you put up a list of off-sets that you feel is appropriate for the 38 hour week?

40 MR CAMERON: We have discussed various things in terms of how that 38 hours a week - per week would apply in terms of the days of the week that they could be used without reducing employee benefits, but to bring things into account there, tied those into overtime rates and overtime provisions, time off in lieu of overtime - those things were all discussed in conference. The applicant wouldn't agree to any of those
45 proposed changes, therefore because of those restrictions the employer were looking to improve the flexibility of the award to make things suitable; it's granted that they mightn't apply tomorrow but over the next weeks, months, perhaps years, things are

changing within the retail industry and if they could be brought into account now it will certainly benefit some employers at the moment, but as time goes on more and more employers are going to be benefited by improved flexibility in the hours. Those things were raised with Mr Swallow. Unfortunately, we couldn't come to any agreement as to - what we would put would be minor changes to the award to accommodate those employee concerns.

COMMISSIONER WATLING: Right. So what's the second thing you oppose?

MR CAMERON: The operative date. I think the proposal there - and it may not need arbitration - I think at the end of the day both parties would have to agree that it would be the date of registration or approval by the commission. There was talk at some stage that the operative date be backdated to some stage in line with the other awards. I think the applicant acknowledges that's inappropriate but at this stage the operative date would have to, from the employer's point of view, be no earlier than the date of approval by the commission.

COMMISSIONER WATLING: Right. What's the next one?

MR CAMERON: The next one that we have cause to concern that Mr Swallow raised, I think, was the minimum wage. The concerns there and that would be tied into then the leave loading provisions under the award and that we would look to arbitrate - to seek arbitration on those matters and the other matter was -

COMMISSIONER WATLING: In relation to what in particular?

MR CAMERON: The proposed documentation that's been submitted, as in relation to the annual leave loading, tie into the minimum wage. There's probably some terminology there that's probably inappropriate as far as the employer's concerned -

COMMISSIONER WATLING: In the annual leave load -

MR CAMERON: - in the annual leave clause -

COMMISSIONER WATLING: Right.

MR CAMERON: - loading clause. There has been changes to the existing wording, I understand. That probably needs to be clarified. The clarification can't be reached between the parties so it's something the commission may need to arbitrate on.

COMMISSIONER WATLING: Mm.

MR CAMERON: The other matter was the minimum rates adjustment and the timing of that implementation. I think the applicant's looking to have an adjustment process and a phasing in of that faster than is allowed under the principles and faster than would be consented to by the employers.

COMMISSIONER WATLING: So the employers are prepared to consent to a phased process; have you outlined that to the other side?

MR CAMERON: I think the employers are aware - the applicants are aware that there is an acknowledgment but that process will have to take place, it's just a matter of the timing of that process.

COMMISSIONER WATLING: Yes. So you can't get close on that at all?

MR CAMERON: That's something the employer was willing to negotiate on in terms of these other points that were raised.

COMMISSIONER WATLING: Yes.

MR CAMERON: And I sort of -

5 COMMISSIONER WATLING: Is it worth listing down your areas of agreement and disagreement and then the commission involve itself in a conference as opposed to going straight into arbitration?

MR CAMERON: It may be appropriate for the parties to indicate to you -

COMMISSIONER WATLING: I

MR CAMERON: - those specific areas.

10 COMMISSIONER WATLING: I obviously know where the unions comes from. The union wants prima facie what's in this document.

MR CAMERON: Yes.

COMMISSIONER WATLING: But I don't know what you're wanting and whether or not that could be clarified so we can come closer together and then if we've still got anything outstanding we can just arbitrate the outstanding issues.

15 MR CAMERON: Yes. I suppose the employer's problems -

COMMISSIONER WATLING: The case is going to take a fair while, isn't it, if you are going to argue the 38 hour week -

MR CAMERON: Yes.

20 COMMISSIONER WATLING: - and then the minimum rate adjustments and some of these others?

MR CAMERON: Yes.

COMMISSIONER WATLING: Mm.

25 MR CAMERON: And we would, probably speculate at this stage, involve some sittings around the state in terms of witness evidence that would be needed. And from that point of view, just before you say anything on that, our submission would be that most of the people affected by these changes to the award are small businesses with only one or two employees. The persons that run the business own the business. They would be the people that are affected by the changes to the award that would need to be called to give evidence in relation to that, and that would have a serious impact on
30 their business if they had to travel to Hobart from the north-west or the north, which would mean in some cases the business would have to close for the day because a lot of these businesses are the owner with an apprentice and the apprentice couldn't be left in charge of the store for that period of time.

COMMISSIONER WATLING: Mm.

35 MR CAMERON: So it would be our submission that we would have to seek hearings in either the north or the north and north-west to allow the evidence to be brought to argue against, or argue the impact of these amendments to the award.

COMMISSIONER WATLING: Mm.

MR CAMERON: And in particular and one of the ones that has come up is the apprenticeship rates, was another one that just reminded me -

COMMISSIONER WATLING: Oh, yes.

MR CAMERON: - that we were in contention, is a substantial increase in the percentages applicable to each of the relevant years of an apprenticeship, and from that point of view, it would be quite some time in terms of the arguments in that regard.

COMMISSIONER WATLING: Right. Well -

MR CAMERON: I might suggest and I understand, as Mr Swallow said, this matter has been proceeding for some years now -

COMMISSIONER WATLING: Mm.

MR CAMERON: - that it may be appropriate to set a timetable for each of these things to happen so that we know now where we're going and that the parties can ensure that they are prepared and can proceed as per the timetable.

COMMISSIONER WATLING: I think I would also like to see your view of the world given to the union in writing, the same as the union has given you their view. And I would, as a first step, would like to even explore the differences in conference before we go to full-blown arbitration.

MR CAMERON: Yes.

COMMISSIONER WATLING: I think I - you need to be very definite in what you want and why you want it.

MR CAMERON: Yes. the employer's point of view is they're currently operating under an award which suits the purposes of the industry with some minor problems. The changes to the award are substantial in terms of rates of pay, hours and other things that flow naturally on from those to areas in particular.

COMMISSIONER WATLING: But they are required to participate in award restructuring.

MR CAMERON: The employers?

COMMISSIONER WATLING: Yes.

MR CAMERON: Yes, and that's acknowledged. I suppose, from that point of view -

COMMISSIONER WATLING: And minimum rates adjustment process.

MR CAMERON: Yes. From that point of view the employer is, I suppose, coming from a position of the existing award. And bearing in mind the structural efficiency principles and tidying up the award the employees acknowledge there are certain areas that need to be tidied up. Whether they go as far though as proposed by the applicant in this matter is the question.

COMMISSIONER WATLING: So even in relation to restructuring the classifications and establishing relativities one to another.

MR CAMERON: Not opposed to that process and in terms of the documentation -

COMMISSIONER WATLING: The wage fixing principles require it though.

MR CAMERON: Yes. No.

COMMISSIONER WATLING: So -

MR CAMERON: Yes, we are saying, we are not opposed to that process.

5 COMMISSIONER WATLING: No, but your clients have to understand they require it.

MR CAMERON: Yes.

COMMISSIONER WATLING: They are not going to stay in the dim dark ages -

MR CAMERON: No.

10 COMMISSIONER WATLING: - and they've had a number of years where they haven't participated in this and it's high time they did participate.

MR CAMERON: Yes.

COMMISSIONER WATLING: And so I don't think it is fair to say we are going to stick with the old award because I don't see that as being a practical outcome.

15 MR CAMERON: No. No. What has happened though is there have been changes to that award over the years and the breakdown between the supermarkets and the small retail outlets is highlighted in the existing award. The conditions that now want to flow through to the retail - small retail sector are those that are applying to the supermarkets -

COMMISSIONER WATLING: Yes.

20 MR CAMERON: - and they operate within a different world.

COMMISSIONER WATLING: Yes, but they're both selling goods by retail.

MR CAMERON: Yes. Yes. But the size and nature of the marketplace affect each separately.

25 COMMISSIONER WATLING: But we are looking at the skills, the nature of the work and the responsibility of the employees.

MR CAMERON: Yes. But all of that impacts -

COMMISSIONER WATLING: That's work value.

MR CAMERON: - that impacts though on the profitability of the employer and their ability to provide employment under those terms and conditions.

30 COMMISSIONER WATLING: So you're saying that we shouldn't take any notice of the skill, the nature of the work and the responsibility?

MR CAMERON: No. No.

COMMISSIONER WATLING: No.

MR CAMERON: In relation to the gradings. No, as you say, that's what we are looking at. In terms of the hours and loadings and things like that is a point where the supermarkets and the small retailers are vastly different.

5 COMMISSIONER WATLING: Yes. Right. So a lot of the argument's going to centre around the hours of work.

MR CAMERON: The hours of work. In terms of - just in terms of the apprenticeship rates, as an example too, that's an area where the proposed rates in that draft document presented are vastly different to other awards within this jurisdiction. A substantial increase across the board there for those rates.

10 COMMISSIONER WATLING: Right. So when could you get your view of the world to Mr Swallow? Because that's -

MR CAMERON: Mr Swallow and I spoke briefly about meeting on Monday afternoon in terms of tidying up those other points of consent that were highlighted earlier today.

15 COMMISSIONER WATLING: Mm.

MR CAMERON: Whether we would have a position to put to him at that stage is probably too early in terms of the National Meat Association would have to go back and talk to their executive and we would have to sort of arrange a combined presentation in that regard.

20 COMMISSIONER WATLING: So you are really putting it off till after September?

MR CAMERON: Why September? That date doesn't mean -

COMMISSIONER WATLING: Well your organisation has been flogging that around a bit, in recent times, about how the deal on the State Wage Case means that you can't have anything before two months after the 14th of July.

25 MR CAMERON: Well -

COMMISSIONER WATLING: That's why I'm asking is this a tactic to put it out that late?

30 MR CAMERON: Not at this stage, no. The parties came here with the intention that if we could negotiate various points then the matter would be put through as a consent document before that time if necessary.

COMMISSIONER WATLING: Yes. Right.

MR CAMERON: But as - you know, without going too much into what was discussed in conference the parties are just so far apart in terms of some of the things that were suggested and counter-suggested -

35 COMMISSIONER WATLING: Righto.

MR CAMERON: - we couldn't come to an agreement.

COMMISSIONER WATLING: No, I accept that. But I am mindful that the parties did, in the State Wage Case, did put to the commission that the \$10 would be operative from the 14th of July and that there be no claims prior to September the 14th.

MR CAMERON: Yes, and I think that was raised at the last time we were before you, it was suggested in relation to that process and what was argued in the State Wage Case.

5 COMMISSIONER WATLING: Yes, that's right we did talk about it off the record, about it.

MR CAMERON: Mm.

10 COMMISSIONER WATLING: Righto. Now - so but I would definitely like to see if we can conciliate some of the things before we get into arbitration. So therefore I need to know what your response is to the specific matters contained in Mr Swallow's document.

MR CAMERON: That may be appropriate in terms of the some of the things we were discussing, easier to show in writing as well, that may be appropriate in terms of understanding what concepts are involved if they're put down in writing with examples as well -

15 COMMISSIONER WATLING: Yes.

MR CAMERON: - to show what impact there are on the employers and employees.

COMMISSIONER WATLING: Yes, be very good.

MR CAMERON: Whereas some of the things that were discussed verbally, it is quite hard to conceive.

20 COMMISSIONER WATLING: Yes, if you see it down, it might have a different view of the world.

MR CAMERON: Yes.

COMMISSIONER WATLING: Well, I'd have to say I'd like to try that first before we get into arbitration because I can see a long drawn out case here.

25 MR CAMERON: Yes.

COMMISSIONER WATLING: So, how long do you think it might take you to those examples, and - so that Mr Swallow's got a pretty clear picture, and if it comes to the conciliation process I've got a clear picture as to what you're wanting as well.

30 MR CAMERON: I suppose in some way we're governed by the availability of the commission in that regard.

COMMISSIONER WATLING: Mm.

MR CAMERON: I would say that within two weeks we should have something definite in writing to Mr Swallow and a copy for yourself by Friday the 4th of July.

COMMISSIONER WATLING: Yes.

35 MR CAMERON: I don't think we are affected by Alice Spring's show day.

COMMISSIONER WATLING: We might go off the record for a moment please and have a look at the dates.

OFF RECORD

COMMISSIONER WATLING: Let the record show that we've had some off the record discussions about the timetables and it's agreed that we will reconvene on the 14th of July commencing at 2.15pm. It will be via a conference to see whether or not we can get closer to agreement on the outstanding issues. At the end of that day it should be clear to all concerned, including the commission, exactly where we are going and we will have defined the areas of dispute. Then we will come together again on the 7th and the 8th of August and those days will be listed for arbitration on any of the outstanding issues left over from the 14th.

Before we go to arbitration, Mr Swallow I'll need you to put your application on foot and tell me precisely what subject matters are before the commission for variation, and that's something you might like to consider too, Mr Cameron.

MR CAMERON: Do that after the conference on the 14th of July or do you want that before then?

COMMISSIONER WATLING: Yes, I think we probably should finalise that, you're right, on the 14th of July. So to close that conference, I should know exactly what subject matters are before me. That will enable Mr Cameron, if he feels it's appropriate, to lodge any application to deal with subject matters that are not before me in this particular application. Right?

MR SWALLOW: Very good.

COMMISSIONER WATLING: Any questions? Queries? All happy?

Righto. We'll now adjourn to the dates as specified. Thank you.

HEARING ADJOURNED