

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T Nos 6480 and 6481 of 1996

IN THE MATTER OF applications by the
Australian Municipal, Administrative,
Clerical and Services Union and the
Construction, Forestry, Mining and Energy
Union, Tasmanian Branch to vary the
Furnishing Trades Award

re third \$8 safety net adjustment

DEPUTY PRESIDENT JOHNSON

HOBART, 17 September 1996

TRANSCRIPT OF PROCEEDINGS

Unedited

DEPUTY PRESIDENT JOHNSON: I'll take the appearances, please, for the CFMEU.

MS W. McMULLAN: Mr Deputy President, I represent the Construction, Forestry, Mining and Energy Union, FFTS Union Division; my name is WENDY McMULLAN.

DEPUTY PRESIDENT JOHNSON: Thank you, Ms McMullan. For the AMACSU.

5 **MRS H. DOWD:** If the commission pleases, I appear on behalf of the Australian Municipal Administrative and Clerical Services Union, DOWD H.J.

DEPUTY PRESIDENT JOHNSON: Thank you, Mrs Dowd. For the respondent employers.

10 **MR M. WATSON:** May it please the commission, MARK WATSON, I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Watson. Yes, Ms McMullan.

15 MS McMULLAN: Mr Deputy President, the union would seek the leave of the commission to amend its application by adding to the matters to be dealt with, the final phasing in of increases for junior workers as approved in principle by this commission in Matter T.5228 of 1994.

I wish to tender an amended draft order which reflects the matters we seek to have dealt with. A copy of this draft order was faxed to the other parties on 13 December 1996.

Mr Deputy President -

20 DEPUTY PRESIDENT JOHNSON: Excuse me, Ms McMullan, I am sorry for my silence, I am just catching up with my notes.

Mrs Dowd, what do you have to say about the application to amend the application, please.

25 MRS DOWD: Mr Deputy President, I have no objection to the amendment of the application.

DEPUTY PRESIDENT JOHNSON: Mr Watson.

30 MR WATSON: Mr Deputy President, this matter I don't think is all that straightforward. Our position at this stage is that we would not necessarily be opposed to the amendment to the application, subject to the issue of the operative date for the final phase for unapprenticed juniors which is, as I understand, is what the amendment to the application is all about.

35 So at this stage I suppose out of caution I would just indicate that we would be opposed to the amendment at this point. However, that is not a firm position, depending on how the operative date issue pans out. It may be that we may have to go off the record and discuss the issue.

DEPUTY PRESIDENT JOHNSON: Well if the amendment is made, Mr Watson, then it gives me an opportunity to hear it. It doesn't determine any question of operative date, nor does it, do you think, prejudice any argument you might want to bring in respect of the operative date?

MR WATSON: Well, I guess the issue about the amendment to the application is that - without going into too much detail - the arrangement as per what the award says is that the final phase for unapprenticed juniors would be subject to further application.

5 Now we would have expected, I guess, that that would have been an actual application in the normal way that applications are made, rather than an amendment to the application on the morning of the hearing.

So I guess in that sense so long as we are not going to be prejudiced in terms of operative date, then we don't necessarily have any problem with the amendment to the application.

10 DEPUTY PRESIDENT JOHNSON: Thank you, Mr Watson. Ms McMullan, I will formally order that the application be amended in the terms that you have read out and submitted in the revised application and draft order which, for the purposes of these proceedings, I'll mark as exhibit CFMEU.1.

15 I take that action, Mr Watson, because it gives me an opportunity to proceed on and facilitate the hearing of this matter, and that's as far as the approval goes so far as my order to amend the application. In those circumstances I formally order that the application be amended.

Ms McMullan.

20 MS McMULLAN: Mr Deputy President, I will deal with the changes in this draft order during my submission.

Mr Deputy President, in this application the union is seeking to achieve the following outcomes:

1. To increase the weekly wage rates provided for in the award by the amount awarded in the third safety net adjustment, that being \$8.00.
- 25 2. To increase work and condition-related allowances by 5.75%.
3. To increase the rates of pay that applies to unapprenticed juniors by having the third phase-in step apply as previously approved in principle by the commission.

In this matter the union will show that the application meets the criteria specified by the commission in the 1996 review of wage fixing principles.

30 That the increase sought for unapprenticed juniors has been finalised in the federal jurisdiction by a full bench of that commission.

That the matter is by consent, as far as we are aware.

35 The union will seek an operative date from today's date for the safety net adjustment and allowances and an operative date of 10 April for the final phase-in increase for juniors.

Matters relating to this application which affects clerical employees and drivers will be dealt with by their respective unions.

40 Mr Deputy President, in this application the union seeks to increase the weekly wage rates in the Furnishing Trades Award by \$8.00 per week, the amount prescribed for the third safety net adjustment.

My submissions will deal with wage rates for production, furnishing industry tradesperson employees in Division A.1 and glass employees other than safety glass in Division A.2 of the award.

5 I wish to deal with the tests required by the commission's principles which must be met before the safety net adjustment can be awarded. These tests are found at section 7.3.2 of the principles; 7.3.2.1 requires that the award must have been varied to reflect the first and second \$8.00 safety net adjustments. I can advise the commission that this has been done; 7.3.2.2 requires that 12 months must have elapsed since the second safety net adjustment was granted. The second safety net adjustment was
10 granted on 26 July 1995, just under 14 months ago; 7.3.2.3 requires that the parties commit to review the award in the context of (1) consistent award formatting, (2) removal of discriminatory provisions, (3) removal of obsolete or amendment of inaccurate award provisions, (4) updating Clause 6 - Parties and Persons Bound, (5) rewriting of the award in plain English, (6) the appropriate use of facilitative provisions, and (7) the inclusion of the appropriate enterprise flexibility clause.
15

On behalf of the CFMEU, FFTS Union Division, I can advise that we are prepared to be involved in such a review.

The commission will see from the draft order I tendered this morning that \$8.00 has been added to the safety net adjustment column and that the total wage rates have
20 been adjusted accordingly in both Divisions A.1 and A.2 of the award.

Section 9 of the review of wage fixing principles 1996 deals with the issue of allowances.

The union is seeking to increase in this application work and/or condition related allowances by 5.75% which has been applied to those allowances as they were prior to
25 the second safety net adjustment being granted.

The commission will note corrections made in the calculations in the draft order tendered this morning as they relate to the allowances for handling money in Division A.1 and A.2 and the leading hand allowances in section A.2.

Mr Deputy President, the union in this application is seeking to have the commission
30 approve of the final phasing in step in wage rates applying to unapprenticed junior workers.

I wish to provide the commission with a brief history of this part of the application.

Prior to 19 October 1994 apprentices and junior workers wage rates were based upon a percentage of the base rate of adult workers. In the case of apprentices the
35 tradespersons rate and for junior workers the production employee level 3 rate. This was the case in both state and federal furnishing industry awards.

On 19 October 1994 the full bench of the Australian Industrial Relations Commission made a decision which based the wage rates of apprentices and junior workers on the total wage rate of the appropriate adult classification. This decision is recorded in
40 Print L5963.

Because of the size of the increases involved they were phased in in the following manner: apprentices first, second and third year in three steps; the fourth year adult apprentices in two steps; junior workers in three steps. In the case of unapprenticed juniors the third increase due on 10 April 1996 was approved in principle but had to
45 be the subject of further application as a wider review of young persons wage rates may have some effect on junior rates in the furnishing industry.

The effect of this full bench decision flowed onto the Tasmanian award in Case No. T.5228 of 1994 in the same manner as applied federally.

5 In March of this year the CFMEU applied to the Australian Industrial Relations Commission for the final phasing in step to be made. This, again, was the subject of a full bench decision which is recorded in Print No. N148 - N1418, sorry.

The third and final phasing in step was awarded in this decision dated 8 May 1996 and made retrospective to 10 April 1996.

10 The increases that applied in the federal award and those that we are seeking here today are: age under 17 \$8.00 per week; 17 to 18 year old \$9.80 per week; 18 to 19 \$11.55 per week; 19 to 20 \$5.55 per week, and 20 to 21 \$7.40 per week. These rates are in addition to the safety net increase.

I wish to tender as an exhibit three prints of the Australian Industrial Relations Commission. They are Prints L5963, N1418 - the decisions of the full bench - and Print N1935 - the order in respect of the final phasing in step for juniors.

15 DEPUTY PRESIDENT JOHNSON: I will mark those exhibits as a bundle: CFMEU.2.

MS McMULLAN: I refer to Print L5963, page 7, the final paragraph. It reads:

Subject to a modification which will be dealt with shortly the phase in proposed by the award parties is appropriate in the circumstances of this Award, including the delayed determination of the current application.

20 It goes on on page 8:

However, for the reasons that follow, we will not finally approve and include within the Award arising out of this decision all three staged increases proposed in relation to unapprenticed junior workers. For the same reasons, we will slightly modify the phase in proposed in relation to junior rates and ages 19 to 20 and 20 to 21. Instead, we will approve and include in an order the three 25 phased increases in relation to apprentices, junior and adult, and the first two phased increases in relation to unapprenticed junior workers, subject to reducing the second phased increase proposed in respect to 19 to 20 and 20 to 21 year old unapprenticed juniors by \$5.55 and \$7.40 respectively and including 30 these amounts as a third phased increase for those age groups. The third phased increase for unapprenticed junior workers, as modified by this decision, is approved in principle but its final approval and incorporation into the award will be subject to further application and hearing in March 1996 at which time the effect of any development arising out of the longer terms review of youth 35 training wages commenced by the working party process can be considered.

If I can now refer to Print N1418, page 1, final paragraph, where it says:

We approve the application in full in respect of apprentices; in full in respect of the first two phased increases for unapprenticed juniors but, in principle in respect of the third increases for unapprenticed juniors, with final approval and 40 incorporation into the award to be subject to further application and hearing.

It continued on page 2:

Our reasons for doing so were recorded on page 8 of Print L5963 as follows:

We have taken this approach in light of the revised increases sought by the CFMEU as a consequence of the final amendment to its application. That revision resulted in a slight reduction in two rates claimed for unapprenticed juniors in order to maintain appropriate relationships between the transition wages it is ultimately seeking.

If we were to now approve the final rates resulting from the application of junior percentages to the adult rate in the Furnishing Trades Award we might create an outcome in excess to that ultimately sought or determined following the Board of Review of Junior Training Wages which is now under way.

Accordingly, the third increase in relation to unapprenticed juniors, as modified above, will be subject to a separate application and order in March 1996 in order to allow the Commission at that stage to consider the effect of any developments arising out of the broader review of youth training wages.

We did not reserve final approval of the third increase for unapprenticed juniors because of any inconsistency of it with our general reasons for decision in Print L5963, rather as is evidenced by our in principle approval there is no such inconsistency, rather final approval was reserved in order to allow us to consider the effect of any developments arising out of the Board of Review of Youth Training Wages including any possible access of rates against those which might arise out of the broader review.

If we just skip a paragraph and go down to the next one, it says:

We are not aware of any developments arising out of the broader review of youth/training wages which should cause us not to give final effect to third increase for unapprenticed juniors. Accordingly, we approve the current application.

The only issue of contention between the parties who put submissions to Deputy President Watson concerned the date of effect of any order giving effect to this decision. In Print L5963 we approved the third increase in principle including the phasing agreed between the parties which we found to be appropriate in the circumstances of the award. We do not accept that the mere coincidence in timing with the safety net adjustment to have effect from 17 April 1996 provides a proper basis to depart from the date already approved in principle, agreed earlier between the parties and applying to apprenticed juniors by virtue of our order arising out of Print L5963. The increase arising out of the order arising from this decision will have effect from 10 April 1996.

If we now go to N1935 which refers to:

Junior workers

Percentage of the total weekly wage rate for the adult classification of Production Employee, level 3, in subclause 12(c) of this award.

Age	%
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	<i>Under 17 age group</i>	45
	<i>17 and under 18 years of age</i>	55
	<i>18 and under 19 years of age</i>	65
	<i>19 and under 20 years of age</i>	78.5
5	<i>20 and under 21 years of age</i>	93

And on the next page you'll find the third step and the increases we are seeking here today are:

	<i>Under 17 year old</i>	<i>\$8 per week</i>
	<i>17 - 18 year old</i>	<i>\$9.80 per week</i>
10	<i>18 - 19 years</i>	<i>\$11.55 per week</i>
	<i>19 - 20</i>	<i>\$5.55 per week</i>
	<i>21 - 21 year old</i>	<i>\$7.40 per week</i>

Mr Deputy President, it is the submission of the union that in respect of this part of the application, the operative date should be the 10th April, 1996. This would mean that apprentices and juniors covered by this award would be treated in the same manner in respect of the operative date of this increase.

As a union we would not wish to see juniors discriminated against. Further, the union would submit that employers were aware that this increase was due on the 10th April, 1996, so making this payment retrospective should not cause undue hardship. Also, we believe the number of persons this would affect is small and would not affect the economy of the industry.

The commission will see from the draft order tendered that we have deleted all the unnecessary wording dealing with the phasing in process which will be completed as a result of this hearing, should the commission see fit to grant the application as sought.

We have also included a separate column dealing with the final phasing in step from the 10th April, 1996. Your Honour - or sorry - Deputy President, with respect to the remainder of this application we seek an operative date for the first full pay period to commence on or after today's date.

Further, Deputy President, we have had discussions with TCCI representatives and the application is by consent as it relates to safety net adjustment.

Mr Deputy President, the union in this application has sought to vary the award to provide for the third safety net adjustment and to increase work related allowances.

To finalise the phasing in of increases for unapprenticed junior workers. I have shown that the application meets the tests specified in the commission's principles. I have established that the final phasing in of increase for junior workers has occurred federally by way of a full bench decision in the manner sought in this application. I have established that there should be a different operative date for this section of the union's application. I have shown that this application is by consent as far as the

safety net adjustment is concerned. An amended draft reflecting this application has been tendered. If the commission pleases.

DEPUTY PRESIDENT JOHNSON: Julie, does this order cover the transport people?

ASSOCIATE: Yes, it does.

5 DEPUTY PRESIDENT JOHNSON: Yes, I thought it did. Ms McMullan, there are a couple of questions that I need to ask you and one of them from your own experience you might not be able to answer but don't feel embarrassed about that because Ms Dowd or Mr Watson will be able to answer the question. In your submission earlier you suggested, I think I heard correctly, that the order that you've submitted today
10 leaves the TWU and the, what I will call for shorthand terms, the Liquor Trades and Miscellaneous Workers Union to attend to their own parts of this award in terms of the \$8 Third Safety Net Adjustment. However, the order itself which I notice and my associate confirms, does in fact include the \$8 for those parts of the award. Did I mishear you?

15 MS McMULLAN: No, Deputy President, it's actually written in the submission, yes, but I have to agree with you - yes, it's already included.

DEPUTY PRESIDENT JOHNSON: Yes. So it is included in their agreement -

MS McMULLAN: Yes.

DEPUTY PRESIDENT JOHNSON: - and desirably so, in my view.

20 MS McMULLAN: Yes.

DEPUTY PRESIDENT JOHNSON: Yes, thank you. Now the question that you might not be able to answer, just to sum up your submission from a technical point of view, the first adjustment took place from the first full pay period on or after the 17th March, 1994; the second adjustment from the first full pay period on or after the 26th
25 July, 1995. As you say there is clearly 12 months between the second and the third, this application. What I need to ask you is whether there are any previous increases since November 1991 that need to be offset in respect of this safety net adjustment, and if you don't know say so because -

MS McMULLAN: Yes.

30 DEPUTY PRESIDENT JOHNSON: - because the other parties will know.

MS McMULLAN: That's correct, I couldn't answer that one.

DEPUTY PRESIDENT JOHNSON: Mm - thank you. The commitment has been given by the CFMEU; for your purposes, Mr Watson, I can indicate that I have written commitments from the Transport Workers Union and from the Australian Liquor
35 Hospitality and Miscellaneous Workers Union and perhaps for the sake of completeness I would simply add to this record that the minimum rates adjustment exercise has been completed in respect of this award. Ms Dowd.

MRS DOWD: Thank you, Mr Deputy President. Following on from your comments and the submission put forward by the CFMEU, there isn't a lot left for me to say
40 other than the fact the Australian Services Union does give a commitment to principle 7.3.2.3 and that we agree to review the award and we would also seek an operative date for the first full pay period on or after the 17th September 1996, which is today's date. If the commission pleases.

DEPUTY PRESIDENT JOHNSON: You don't choose to make any submissions about the unapprenticed juniors, I take it, because they're not within your scope.

5 MRS DOWD: No, Mr Deputy President, the - in relation to the unapprenticed juniors, it's not an area that I am familiar with. It's not an area where we have any members and it's not an area where we have any constitutional coverage, so I've actually left that to the CFMEU to pursue their arguments.

DEPUTY PRESIDENT JOHNSON: Thank you, Ms Dowd. Mr Watson.

10 MR WATSON: Thank you, Mr Deputy President. First of all, those commitments that you have there from the - I understand that's the blanket TWU commitment is it, that's been with the commission for some time?

DEPUTY PRESIDENT JOHNSON: It certainly is, Mr Watson.

MR WATSON: Yes. And the one from the Miscellaneous Workers Union does commit to the review of the award?

15 DEPUTY PRESIDENT JOHNSON: I wasn't aware that you hadn't seen this and after the proceedings I'll ask Mrs Gillie to provide you with a copy, but for purposes of the proceeding at the moment, perhaps I could ask you to simply accept my quote of what the letter says. It's signed by Ms Pauline Shelley, Acting Secretary and dated the 3rd September, and what it says in respect of matter T.6480 of 1996 is, I quote:

20 *This is to advise that in respect of the above application, our organisation commits to a review of the Furnishing Trades Award as enunciated in Principle 7.3.2.3 of the decision of the Full Bench of the 24th July, 1996.*

That ends the quote.

MR WATSON: Yes, that's acceptable, Mr Deputy President, I don't actually need to sight it as long as that's - that's fine what that says.

25 Well perhaps if I can deal with the issue of the \$8 safety net adjustment first of all to get that matter out of the way.

DEPUTY PRESIDENT JOHNSON: I think if you deal with it in two parts it will make it easier.

30 MR WATSON: Yes, that's right. So I can - I can advise the commission that based on the commitment that it has been received both from the two unions present today and the two unions who have written to the commission, the appropriate commitment has been given in accordance with the wage fixing principles and therefore on the basis that the other tests have been met under the principles for the Third \$8 Safety Net Adjustment, we would advise of consent to that particular part of the application.
35 As Ms McMullan has said, we have sighted the draft order in relation to the \$8 safety net and there are no problems with that. There is no offence of the public interest and the application in our view is in accordance with the principles and therefore we advise of the consent from the first full pay period on or after today's date.

40 DEPUTY PRESIDENT JOHNSON: If I might just interrupt you for a moment, Mr Watson, Ms Dowd, I know that you're anxious to get away to another hearing because you were courteous enough to inform me of that; I'm not quite sure how the proceedings will go from here but you are free to leave whenever you wish and I would take it that your view would be that irrespective of the outcome on unapprenticed juniors that the order should issue in respect of the Third Safety Net Adjustment.

MRS DOWD: Thank you, Mr Deputy President, the hearing that was scheduled for 9:30 has now been postponed until the 17th October, 1996.

MR WATSON: Is that right?

MRS DOWD: So I can actually remain.

5 MR WATSON: Is that for transport workers?

MRS DOWD: No, the Automotive Industries Award was scheduled for 9:30 this morning. That's now been postponed until the 17th October, 1996, so I can actually remain.

10 DEPUTY PRESIDENT JOHNSON: Thank you, Ms Dowd. All right, Mr Watson, if you continue please.

MR WATSON: Thank you, Mr Deputy President, just to clarify - I think I'm right - but are you hearing the Transport Workers and the Carriers Award?

DEPUTY PRESIDENT JOHNSON: Yes.

MR WATSON: Yes. That's okay because -

15 DEPUTY PRESIDENT JOHNSON: Following this one.

MR WATSON: I'm in that one too, so I just had to make sure. Mr Deputy President, so that deals with the \$8 Safety Net Adjustment issue and I think we're fairly safe to be able to put that one aside now.

DEPUTY PRESIDENT JOHNSON: Yes, Mr Watson.

20 MR WATSON: Now in relation to the issue of the unapprenticed junior rates, it would be our submission first of all that we are opposed to that part of the application which gives an operative date for unapprenticed juniors of the 10th April, 1996.

25 It is true that the award - or sorry - the commission approved in principle the last phase of the rates for unapprenticed juniors and I take it that you'd be aware of the provision that's actually in the award, Mr Deputy President?

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Watson, yes.

30 MR WATSON: And if I can just quote in clause 8(3) - Unapprenticed Juniors, there is a proviso in there and I quote: Note: - the third increase has been approved in principle by the commission but its final approval and incorporation into the award will be subject to further application and hearing in March 1996.

Now one would have expected that the union would have applied to the commission in March 1996 to have the final phase of the unapprenticed junior rates incorporated into the award and I'm sure that had that happened then there wouldn't have been any problem in terms of us consenting to that particular part of the application.

35 Now the problem that we have, notwithstanding the fact that it was approved in principle, is that there was no date incorporated into the award with regard to an operative date of that particular increase. The onus was fairly and squarely on the union to make application to the commission for the final phase of the unapprenticed junior rates in the same manner as the onus is on the union or unions collectively to
40 make applications to the commission for minimum rates adjustments generally \$8 safety net increases. And as far as I can recall, Mr Deputy President, applications for

the \$8 safety net and minimum rates adjustments which have now just about all been completed, do not have retrospective effect.

5 Now it was in Ms McMullan's submission, as I recall, that at a national level the rates for unapprenticed juniors were incorporated into the award by the federal commission back in April 1996. However, in Ms McMullan's submissions, she did say that the union had applied to the commission in March 1996 for the flow-on of that final phase for unapprenticed juniors. So on that basis that the union had in fact lodged their application in March 1996 as per the award provision, I guess it follows that everything fell into place in terms of the correct operative date.

10 But it's our submission, Mr Deputy President, that to burden employers with what will be five months of retrospective payments in relation to unapprenticed juniors, is not - is not on as far as we're concerned. It would certainly offend the public interest and whilst there may have been circumstances that may apply in relation to this application not being lodged - and I think perhaps I do understand how it's happened
15 - nevertheless, the facts are that the application was not lodged, and here we are on the 17th September, in fact in excess of five months after the time when the application should have been lodged, having to contend with an application for five months' retrospectivity.

20 Now I do contend - if I can just go back to the decision that Ms McMullan tendered in her submission - and it is the decision of Australian Industrial Relations Commission Print N1418. It's dated the 8th May, 1996.

DEPUTY PRESIDENT JOHNSON: I have that, Mr Watson.

MR WATSON: Yes, and if we can go to page 2 of that decision, in the bottom paragraph.

25 DEPUTY PRESIDENT JOHNSON: That's the final paragraph on the page?

MR WATSON: On page 2 - the commission says there from the third sentence:

We do not accept that the mere coincidence in timing with the safety net adjustment to have effect from 17 April 1996 provides a proper basis to depart from the date already approved in principle -

30 Now date already approved in principle, I think, is a bit of a different situation to the state Furnishing Trades Award which simply said that there had been 'in principle' approval but it would be subject to application and further hearing in March 1996, which, as I've said, did not actually happen. Now, just in relation to the Industrial Relations Act, Mr Deputy President, it would be our submission that the act would
35 provide two mechanisms for retrospectivity. The first mechanism would be agreement between the parties and in this case there is no agreement. The second mechanism would be, where in the commission's opinion there are special and extraordinary circumstances which would allow for retrospectivity.

40 Now, it would be our submission that there are no special and extraordinary circumstances in this particular case. It was simply a matter of the union - we'll call it an oversight, an unfortunate circumstance, that the application was not lodged when it should have been and therefore it's the position of the employers that we shouldn't have to come to this commission now and have to be slugged with five months' back pay when the union application should have been put in some five months ago, or
45 even longer.

So, with those comments in mind, Mr Deputy President, we oppose that particular tone of the application which gives an operative date for unapprenticed juniors of 10 April 1996 and we would say that in relation to the third \$8.00 safety net adjustment, that that should be approved and as I said before, as from the first full pay period on or after today's date and therefore the final phase for unapprenticed juniors would in fact be swallowed up into that last increase. So, in effect, they would be levelled out as of today's date. If it please the commission.

DEPUTY PRESIDENT JOHNSON: Mr Watson, given that the application for the movement in the unapprenticed juniors was really made formally in this commission for the first time today, have there been any discussions between the CFMEU and your organisation in respect of this particular matter?

MR WATSON: Of this particular part of the application?

DEPUTY PRESIDENT JOHNSON: Yes.

MR WATSON: Well I understand that an amended draft order was in fact faxed to our Launceston office late on Friday by Ms McMullan. When I say on Friday, the fax actually says 16.51, which is 10 to 5. So it was faxed late on Friday.

DEPUTY PRESIDENT JOHNSON: Perhaps I can abbreviate this a little bit in helping you. There has been no formal discussion between the CFMEU and TCCI as representative in Tasmania of the respondent employers regarding the delay in making the application, or the fact that the application would claim a retrospective operative date from 10 April.

MR WATSON: Only to the extent, Mr Deputy President, to be fair, that the order was faxed late on Friday, including 10 April date, but certainly that's all there was.

DEPUTY PRESIDENT JOHNSON: Yes, but there's been no discussion -

MR WATSON: Not that I'm aware of.

DEPUTY PRESIDENT JOHNSON: No capacity offered you by the applicant union to discuss outside the confines of this commission, the claim for the retrospective operative date?

MR WATSON: Not that I'm aware of, Mr Deputy President. Ms McMullan may have different views on that but certainly, as far as I'm concerned and as advised by Mr Cameron, that's certainly the position.

DEPUTY PRESIDENT JOHNSON: Yes. Thank you, Mr Watson. Ms McMullan, I am well aware that your circumstances will make this situation very awkward for you, I think. I don't know exactly what you want me to do and perhaps to assist you, what I should do is put some words in your mouth and then ask you to respond to them. It seems to me, in the circumstances, that I should proceed to issue the orders for the third \$8.00 safety net adjustment but then to direct your organisation to enter into discussions with TCCI in respect of the claim for the retrospective operative date. That will give the organisations an opportunity to see if they can settle the matter without it going to arbitration, because it seems to me that I should not, in effect, arbitrate against the interests of your organisation on this matter today when you may not be prepared to argue the point on the basis of the instructions given to you.

I think you said that the CFMEU expected that there would be consent and of course the consent is not present.

MS McMULLAN: Well, if I can say, Deputy President, I did receive a phone call from Andrew Cameron from Launceston office late Friday afternoon, after he'd received the new draft order, in relation to a particular allowance, first-aid certificate, but he didn't mention that he had any problems with 10 April 1996 date in that draft at that stage.
5 I naturally assumed that he was consenting to it.

DEPUTY PRESIDENT JOHNSON: I still think the best course for me to take, Ms McMullan, is to adjourn that part of this application and relist it in two or three weeks' time and in the meantime direct that the parties confer on this issue, with a view to seeing if agreement can be reached prior to the matter going to arbitration. I don't
10 think that I should put myself in the position of determining against your interests in the circumstances when the matter has not been fully discussed between the organisations, and nor do I think I should put myself in the position of arbitrating against the interests of the organisation Mr Watson represents, simply on the basis that Mr Cameron who is, I think, the senior officer of TCCI in Launceston, but I don't
15 see that the fact that he didn't mention this matter is something I should use to rule against TCCI in the circumstances in favour of your organisation.

I've outlined the process that I think I should follow. Before I do that, do you want to make any further submissions on the point?

MS McMullan: No, I accept your decision, Deputy President, thank you.

DEPUTY PRESIDENT JOHNSON: Mr Watson, do you have anything further to say on the matter?
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MR WATSON: No, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: Is Friday 11 October all right, Ms McMullan?

MS McMULLAN: Yes.

DEPUTY PRESIDENT JOHNSON: Mr Watson?
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MR WATSON: Yes.

DEPUTY PRESIDENT JOHNSON: That being the case, on the basis of the submissions that I have before me today, in respect of the application in so far as it concerns variation of the award for the third \$8.00 safety net adjustment I will,
30 subject to checking the details and particular amounts in the draft order, submit it in the form of CFMEU.1 today. I will, subject to that condition, vary the award, all of the requirements for the awarding of the third safety net adjustment being satisfied and there being no reason by way of public interest that I should take any further action to the contrary.

To that effect, that increase will take effect from the first full pay period to begin on or after today's date. In respect of that part of the application as amended today, which concerns the wage rates for unapprenticed juniors, I will adjourn that proceeding until 9.30 on Friday 11 October. That concludes for the time being the hearing in matter T6480 and 6481 of 1996.
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HEARING ADJOURNED
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