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TRANSCRIPT OF PROCEEDINGS

O/N 1099

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER T.J. ABEY

T No 10742 of 2003

T No 10764 of 2003

T No 10782 of 2003

METALLIFEROUS MINING AND PROCESSING AWARD

**Applications pursuant to the provisions of
section 23 of the Industrial Relations Act 1984
by the Australian Workers Union, Australian Mines
and Metals Association and Automotive, Food, Metals
Engineering, Printing and Kindred Industries Union
to vary the above award re inclusion of further
provisions**

HOBART

4.00 PM, MONDAY, 23 AUGUST 2004

Continued from 19.1.04

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

PN116

THE COMMISSIONER: This is a continuation of previous conferences or series of conferences that we have been having on this particular matter. At the moment, we are on the record at the request of the parties. So, Mr Flanagan, what is the position?

PN117

MR FLANAGAN: Thank you, Commissioner. Commissioner, since the last matter - since the last occasion the matter was before you, there has been a bit of a gap but there have been further discussions reinvigorated and arising from that what we propose to do today is inform the Commission of the position of the parties who are in principle. I understand that what I am about to outline is subject to endorsement by the members of the Australian Mines and Metals Association. I also understand a number of the issues have already had consultation with their members so we are closer now it appears than we have ever been before and I guess the pivotal issue in terms of production employees has always been the appropriate rate of pay. It is that issue which for some 15 years has stalled the award from going forward. So what I would seek to do is tender an extract of the West Australian Goldmining Award, if I may.

PN118

THE COMMISSIONER: That is the document that is page 13 at the top, is it?

PN119

MR FLANAGAN: That is correct, yes.

PN120

THE COMMISSIONER: We will mark it as an exhibit.

PN121

MR FLANAGAN: I believe the last exhibit would be AWU2 but I am relying on memory there.

PN122

THE COMMISSIONER: AWU2 is correct, we will make it AWU3.

**EXHIBIT #AWU3 EXTRACT OF THE WEST AUSTRALIAN
GOLDMINING AWARD**

PN123

MR FLANAGAN: Now, as I indicated, Commissioner, this is an extract from the West Australian Goldmining Award and the agreement in principle between the parties is that both the classification structure and the rates of pay will be the classification structure and rates of pay which will appear in our State award. The rates need to be subject to being current rates. It may be that the State wage case proceedings of this year are not included in the figures which are in AWU3, but clearly the intent of the parties in the context of the

non trades classifications is to reflect the structure and rate of pay. So that is a significant move forward.

PN124

Now, the insertion of that structure into the award would be on an interim basis and should either party believe that the structure for some reason or other in terms of its implementation has some un-anticipated effect then either party would have leave reserved, as it were, to make further application to vary the award in relation to its classification structure.

PN125

Now, in terms of the trades structures, the AMWU and ETU will be proposing or providing the Australian Mines and Metals with a structure for the trades occupation because they are not actually contained within the West Australian Goldmining Award and I understand that that structure which will be proposed to the industry by those unions will reflect the structure in the Metal Industry Award. The next thing that I would seek to take the Commissioner to is an email from Mr Mayes to myself dated 20 August 2004. If I could tender that?

PN126

THE COMMISSIONER: Yes, we will mark that AWU4.

EXHIBIT #AWU4 EMAIL FROM MR MAYES DATED 20/08/2004

PN127

MR FLANAGAN: Now, as a part of the discussions recently between the unions and the industry, it was proposed that there be provisions inserted in relation to the electricians licence and the underground mine work and so attached to the email are the two provisions to reflect that discussion.

PN128

THE COMMISSIONER: Yes.

PN129

MR FLANAGAN: If I could take you, then, to - - -

PN130

THE COMMISSIONER: That is just the allowance?

PN131

MR FLANAGAN: That is correct, yes.

PN132

THE COMMISSIONER: That will be superimposed on the classification structure that will be going forward from the - - -

PN133

MR FLANAGAN: That is correct, yes, that is right. Now, the next issue is the actual award. I provided - I would seek to tender a copy of AWU1.

PN134

THE COMMISSIONER: Yes.

PN135

MR FLANAGAN: Now, it needs to be marked as a separate exhibit, Commissioner, because what I propose to do is take you through that clause and identify the agreement or lack of agreement between the parties.

PN136

THE COMMISSIONER: Right, so we will mark it AWU5.

EXHIBIT #AWU5 FORMERLY TENDERED AS AWU1

PN137

MR FLANAGAN: In terms of AWU5, if I can take you to page 3 of that. Clause 3, scope.

PN138

THE COMMISSIONER: Yes.

PN139

MR FLANAGAN: That is agreed. Now, when I say it is agreed, Commissioner, it is obviously subject to the final response of the members of the Australian Mines and Metals, but that is agreed. Date of operation would be the date of approval, that is agreed. The award interest and parties bound is agreed.

PN140

THE COMMISSIONER: Yes.

PN141

MR FLANAGAN: The definitions of Show Day are agreed. The deletion of part time and casual employees is agreed. The definition of Industrial Commission and mine operations is agreed. The mining employee definitions and the trades definitions will be as per the West Australian Goldmining Award and for further discussions that need to be had in relation to the maintenance employees. So there is a little bit of tweaking to be done but we are substantially there.

PN142

In Part II employment relationship, clause 1 in contract of employment clause A, B, C and D are agreed but in relation to D2 and 4, there needs to be further discussion and conciliation. If we are unable to resolve those two issues by conciliation, then it will be necessary for the parties to proceed to arbitration. However, (iv) is agreed, as is (iii) - - -

PN143

THE COMMISSIONER: So it is (v) - no, I have got a tick against - - -

PN144

MR FLANAGAN: It is (ii).

PN145

THE COMMISSIONER: I have got two (iv)s.

PN146

MR FLANAGAN: Two, and (iv) that need to - - -

PN147

MR MAYES: There are two (iv)s there.

PN148

THE COMMISSIONER: There are two (iv)s.

PN149

MR FLANAGAN: There are two (iv)s?

PN150

MR FITZGERALD: The second one is agreed.

PN151

MR FLANAGAN: I see, the first - - -

PN152

MR FITZGERALD: It should be (v).

PN153

THE COMMISSIONER: So it should be (v).

PN154

MR FLANAGAN: Thank you, Commissioner, I didn't fix that up. Now, having regard to the matter previously before you today, in clause 3, scope, it still refers to the Pasminco Rosebery mining report. Obviously, we will be attending to that to reflect the Zinifex - - -

PN155

MR FITZGERALD: Well picked up.

PN156

MR FLANAGAN: So, going back to page 7 of the document, that is agreed - when I say that is agreed, subclause (e), (f), (g) and second (g) are all agreed provisions as are the provisions in subclause (h) on page 8. On Part III of wages and related matters, we have talked about classification structures so that will replace the existing clause 1 wage rates.

PN157

THE COMMISSIONER: Yes.

PN158

MR FLANAGAN: Clause 2, payment of wages, is all agreed.

PN159

MR FITZGERALD: Excuse me, can I just make a mention - there was some issue about the apprentice rates, I think, which the AWU and CEPU were going to provide?

PN160

MR FLANAGAN: Yes, that is right. Yes, so in terms of the structure, I guess there are three components. There is the production component, which is agreed in principle; there is the maintenance structure which the maintenance

unions will provide and there will be some discussion there about that and then there is the issue of apprentices and the maintenance unions are going to provide to the industry a proposal.

PN161

THE COMMISSIONER: Yes.

PN162

MR FLANAGAN: Then, on page 10 under the heading of Deduction of Wages, the parties have agreed to have a look at the wording of the Impact Fertilisers Award and there will be further discussion about that. If the parties are unable to reach agreement it may be that we need further conciliation in relation to that provision. Then on page 11, Allowances, that whole allowances issue is really tied to the classification structure so we will come back to you with further proposals in relation to that.

PN163

For example, you will see that in clause 4D it talks about the A Grade allowance. That is clearly replaced by wording that Mr Mayes has provided today. I beg your pardon - on 20 August. Now, in terms of the hours of work - this is on page 12 - there needs to be further discussion in relation to 1A(i) and 1A(ii). Those two areas may require conciliation and/or arbitration. However, (iii) and (iv) are agreed. In terms of the rostered days off, it says there notwithstanding provisions contained elsewhere in this award and in accordance with the provisions of Part IV clause 6 of this award - which is a consultation mechanism - other than the part which is underlined the RDO provision is agreed, so it may be that we can work through the bit which is agreed, and there is a link throughout these hours of work issues where the issue is whether or not the facilitative mechanism in clause 6 should be utilised to implement the changes or the flexibilities which are a compound of those provisions.

PN164

So, in terms of the next page, the remaining provisions, (iii) through to (vi), are all agreed. And then under the heading Make-up Pay, all the provisions are agreed except for that part which is underlined - again the issue of the consultative provision. Going over the to page 14, again (iv) and numeral (v) were agreed. In clause 2, holidays and weekend work, there is an amendment to subclause (b)(ii)i so it should read "On Sundays and Public Holidays double time" but with that change all the provision is agreed.

PN165

In relation to shift work, clause 3A, the definitions are agreed. In relation to clause B, hours of work continuous shift workers, right through to the end of that provision on page 17, Australian Mines and Metals is to come back to the unions about those provisions - - -

PN166

THE COMMISSIONER: How - just step back a second. On page 14 you have got shift work A agreed?

PN167

MR FLANAGAN: Yes.

PN168

THE COMMISSIONER: The next page I have got I am not sure if it follows. It has got 11 up the top.

PN169

MR FLANAGAN: It should be page 15 and 16.

PN170

THE COMMISSIONER: Okay.

PN171

MR FLANAGAN: Do you have page 15 or 16?

PN172

THE COMMISSIONER: Yes. That is 15. Yes, so I will just take those three out.

PN173

MR FLANAGAN: They are out of order, are they?

PN174

THE COMMISSIONER: I do not know that they are out of order. I think they are in addition.

PN175

MR FLANAGAN: I see.

PN176

MR FITZGERALD: It should follow 15, 16 and 17.

PN177

THE COMMISSIONER: Fifteen, - - -

PN178

MR FLANAGAN: On page 15 - - -

PN179

THE COMMISSIONER: Yes, that is all there.

PN180

MR FLANAGAN: Yes, So B, hours of work continuous shift workers right through to the remainder of that provision, Australian Mines and Metals is going to come back to the unions so that will need to be the subject of further discussions and conciliation and failing that, arbitration.

PN181

THE COMMISSIONER: Right.

PN182

MR FLANAGAN: In terms of overtime, the unions are considering their position in relation to clause 4A, day workers, and will be coming back to discuss that further but subclause (b) is agreed and there are to be - the standard test case provisions will be inserted in relation to the requirement to work

reasonable overtime and that is agreed by the parties that that is what should go in there.

PN183

The next para, issues clause 20, call back, the parties have agreed to that. Sub clause D, time off in lieu of payment, again with the exception of the reference to the consultative mechanism that is talked about there, the parties have agreed to the provisions in relation to time off in lieu of payment.

PN184

THE COMMISSIONER: Yes, where do I see call back?

PN185

MR FITZGERALD: At the top.

PN186

MR FLANAGAN: It is at the top of page 20.

PN187

THE COMMISSIONER: Yes, right.

PN188

MR FLANAGAN: So that is all agreed, And then time off in lieu of payment you will see underlined is the reference to the consultative mechanism. That needs to be the subject of further discussion. With reference to enterprise flexibility, that clause is to be deleted and there needs to be further discussion regarding clause 6, facilitative provisions, which is identified on page 22. And the industry is to come back to the unions in relation to that matter.

PN189

In relation to annual leave, there is a - in clause 1(a)(i) on the third line it refers to part-time employees who are paid as casuals. That reference or parts on casuals - or parts on employees who are paid as casuals is to be deleted. In (ii) following that we believe that that is okay but again the industry is to come back to the unions on that matter.

PN190

MR FITZGERALD: Sorry, which one is that; (ii, is it?

PN191

MR FLANAGAN: That is clause 1, annual leave, subclause (a)(ii). The industry has also to come back in relation to subclause (b), time of taking leave, where the unions propose that we should be provided with at least four weeks notice rather than two, and indeed the industry is considering its position in terms of the allowances which should be paid during the period of leave so the industry has to come back to us in relation to those matters as well.

PN192

There is agreement, however, in the following page in relation to the day workers receiving a loading of 17 1/2 per cent. In terms of shift workers and their loading, AMMA is to come back to the unions in relation to that matter. Subclause (d)D, proportionate leave on termination of service, is agreed. Then (e), calculation of continuous service, the first paragraph is agreed. There is a

reference in the second paragraph to 12 months continuous service to the extent of 90 days. Following research by the union we accept that that is a feature of a number of State awards and therefore from an AWU perspective, that is agreed. The other unions may need to consider their position on that, however.

PN193

THE COMMISSIONER: Right.

PN194

MR FLANAGAN: In relation to (f), broken leave, with the hand-written amendment which appears there, that provision is agreed. On the following page, page 25, annual leave exclusive of public holidays is agreed and clause (h) is agreed but again the issue there is the link of that flexibility to the facilitative clause, clause 6, so you see that there is an issue, a thread if you like running from a number of the issues. The substance is agreed, the question is how you get there.

PN195

THE COMMISSIONER: Yes, I understand.

PN196

MR FLANAGAN: On the following page 26, sick leave, there is to be further discussion in relation to the preamble in clause 2A where it talks about employee paid as a casual, so there is an issue there that needs to be worked through, but other than that with the changes which are identified in (iv), the remainder of that page is agreed. On the following page 27, subclause (c), the AWU is to come back to the industry in relation to the Metal Industry Award clause 7.2.4(e). Carers leave is agreed in total.

PN197

THE COMMISSIONER: That will take care of a few babies.

PN198

MR FLANAGAN: Only a couple, I was surprised.

PN199

THE COMMISSIONER: Only a couple, right.

PN200

MR FLANAGAN: Page 29, bereavement leave is agreed. Parental leave which is a number of pages is all agreed, after meticulous scrutiny. So, - - -

PN201

MR MAYES: Forty-eight, Robert.

PN202

MR FLANAGAN: Page 533, is it?

PN203

MR MAYES: Forty-eight. Oh no, hang on.

PN204

MR FITZGERALD: No, further - - -

PN205

MR MAYES: Sorry, yes.

PN206

MR FLANAGAN: Flicking through page 29 through to page 53 is the issue which next arises, is holidays with pay. Now the parties have reached agreement in relation to the operation of that provision but there is other thread which is running through these provisions where the industry seeks to have part-time employees paid as casuals and the unions have a problem with that. So that thread, if you like, will need to be the subject of conciliation.

PN207

THE COMMISSIONER: Yes.

PN208

MR FLANAGAN: The next area which is being discussed is settlement of disputes and grievances. There is agreement in relation to clause 1< settlement of disputes and grievances. The guiding principles, however, in paragraph H seem to be an issue with the industry so we will need conciliation in relation to that. Then moving over to page 57, it has been agreed to delete the reference to medical examination, safety and personal belongings and in relation to the proposed provisions in relation to protective clothing and amenities, the industry is to come back to the unions and in relation to Part (VIII) of award compliance, again the industry is to come back to the unions in relation to right of entry, job reps, posting of awards and notice board.

PN209

So with the exception of a few small matters there, Commissioner, we are getting very close. So we had hoped in scheduling the meeting today that in fact we would go into conciliation. However, I think probably the more productive approach is for the industry to have its final consideration of what I have just outlined on transcript and that we organise a further date for a morning allotment for conciliation so that we can work through the issues. Having got closer now than we have ever been before, the AWU and the unions do not want to lose the momentum and I hope the industry would be in the same position.

PN210

THE COMMISSIONER: 2004 is still in the sights, Mr Flanagan?

PN211

MR FLANAGAN: I think so, yes.

PN212

THE COMMISSIONER: Yes, Mr Hanisch.

PN213

MR HANISCH: Yes, it is fair to say, if the Commission pleases, that apart from some of the other issues that the AWMU need to source, those issues will be in relation to the classification structure for the trades persons. I will be working in conjunction with the ETU in regards to that matter. Also I have got to come up with some figures, some wage rates for the C10 base level. We would propose that there would be 5 per cent relativities between each level in

the classification structure, pretty much mirror the Metals Industry Award, I think. Stand-down provisions, I guess I may have a slightly different view on the stand-down provisions. I guess under the State Act there are provisions within that, from what I understand, for stand down.

PN214

MR MAYES: Stand aside.

PN215

MR HANISCH: Stand aside.

PN216

THE COMMISSIONER: Stand aside, well, there is a provision there for no work as directed, no pay. Is that what you are talking about?

PN217

MR HANISCH: Yes.

PN218

THE COMMISSIONER: That is a statutory provision.

PN219

MR HANISCH: Look, we are happy to go away and have a look at what there is there and I guess we will move on from there but to date we are happy with the progress so far. I have only attended one meeting in relation to this matter, I must say, but it was pretty fruitful and it is fair to say that we may have a disagreement with one or two matters but we will certainly be seeking the advice of the Commission in those matters.

PN220

THE COMMISSIONER: Yes, thank you Mr Hanisch.

PN221

MR HANISCH: If the Commission pleases.

PN222

THE COMMISSIONER: Mr Mayes, do you have anything to add?

PN223

MR MAYES: Yes, with regard to the classification structure I intend working closer with my colleague, Mr Hanisch, to develop that inclusion in it. With regard to the licence allowances that I forwarded to AMMA and the other unions, straight out award clauses reflecting both the Federal and State Awards with regard to those matters, and at this stage we are looking forward to fruitful discussions and getting it tied up.

PN224

THE COMMISSIONER: Thank you, Mr Mayes. Mr FitzGerald?

PN225

MR FITZGERALD: I guess everyone waits with bated breath to see what I am going to say, but I can certainly indicate, and it was, I think, indicated in another matter before the Commission that we had made some progress and I have confirmed that here today. However, our position still needs to be fully endorsed by our membership. I can say that we met with our members - I haven't got my diary here to note the precise date but it was about three weeks ago, two weeks ago, may be, in Queenstown. It was part of a larger meeting actually, the focus of the meeting was very much on skills, shortages and labour shortages on the west coast and I thought it was opportune also to brief them on this matter as well as some other matters. What I haven't got is a final document and simply, because of other commitments, I simply haven't had the time to do it, but I will give a commitment to, now I am over this 2004, the year of the Mining Award, 2003 seemed to pass us by quickly but I think we - I agree with Mr Flanagan and Mr Hanisch and Mr Mayes that now it certainly is our best opportunity to complete this exercise.

PN226

There are some matters which, you know, obviously are fairly recent and which I just haven't had an opportunity to brief members on and that includes items - and I did not want to go through them one by one - but such as the proposal sent by Mr Mayes last Friday which obviously I haven't had the chance to consider or put to our members, but we will, and there are a number of other matters I think Mr Hanisch was going to get back, particularly the classification structure which is obviously a major component which we need to get firm instructions on but in respect to the non-trades positions in principle, subject to final endorsement by employees we are happy to proceed with the way which Mr Flanagan has suggested and that is reflection of the AWU Gold Award which might need some modifications around the edges but what I need is a good half a day for me to encapsulate this into a document with notations which I can send out to our members and I will get an endorsement of, conduct a final meeting on the west coast or in Launceston which I have scheduled in September to complete the exercise but I don't think there is much point in me going through each of the provisions as Mr Flanagan has done. I think generally that is a fairly accurate depiction of what has occurred, but I think if the Commission permits us to obviously get final endorsement, as it seems the unions opinion is to do, you know, we will undertake to complete this exercise as expeditiously as possible.

PN227

THE COMMISSIONER: Yes.

PN228

MR FLANAGAN: Commissioner, in the terms of I have had some discussions with the other unions and they believe they could provide the outstanding material to the industry in a period of approximately three weeks. So we might be able to use that as a starting point if we can find out from Mr FitzGerald how long he would need.

PN229

MR FITZGERALD: Well, I think it would be useful to have all those matters before so I can put it to members as a complete package. I don't think there is much point in me putting this package out without the AMWU and CPU position so once I have received all that I will start to prepare the document, a briefing document for members, but then I will incorporate the changes as I receive them from the other unions and I will have it sent out and I will organise a meeting. It does require me to have face-to-face discussions.

PN230

The industry as you are probably aware at the moment, Commissioner, given we have had some protracted proceedings with certain members of the industry has certainly changed in its complexion, I am pleased to report. Certainly 12 months ago we were all down in the mouth but it is certainly looking a lot better but that poses problems to me to some extent in terms of getting instruction from members, all a bit busy obviously organising their businesses but I will certainly participate in the spirit in which the unions are participating in, that is to complete this exercise by the end of the year.

PN231

MR FLANAGAN: Now, I guess why I am curious, Commissioner, is if the unions provide the appropriate information to the industry no later than three weeks from now, how long it would take Mr FitzGerald to then get instructions so that we could come back and actually have the conciliation of the outstanding issues.

PN232

THE COMMISSIONER: Yes. We will go off the record.

OFF THE RECORD

[4.30pm]

RESUMED

[4.35pm]

PN233

THE COMMISSIONER: Having heard the parties I am encouraged by the progress that is being made and there is certainly light at the end of the tunnel, it is proposed that we resume in the Commission on 4 October at 10 am for the purposes of conciliation of any outstanding matters. In the meantime the parties will confer on certain proposals that are coming from both sides and hopefully that by the end of 4 October most, if not all, matters will be wrapped up and we can go forward with an award. So thank you for your attendance. The Commission stands adjourned.

ADJOURNED UNTIL MONDAY, 4 OCTOBER 2004

[4.36pm]

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