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AUSCRIPT

TRANSCRIPT OF PROCEEDINGS

O/N 3276

TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT P.C SHELLEY

T No 12742 of 2006

PRODUCE AWARD

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Australian Workers Union, Tasmania Branch
to vary the above award re Part V - Hours of Work,
Penalty Payments and Overtime clause 1 - Stores Employees**

HOBART

9.30 AM, THURSDAY, 31 AUGUST 2006

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

HEARING COMMENCED

[9.30am]

PN1

MR R. FLANAGAN: I appear for the Australian Workers Union, Tasmania Branch.

PN2

MS S. HAAS: I appear for the Tasmanian Chamber of Commerce and Industry Limited.

PN3

THE DEPUTY PRESIDENT: Haas. It is written down here as Brimmage.

PN4

MS HAAS: No, I got married.

PN5

THE DEPUTY PRESIDENT: H-a-y-e-s?

PN6

MS HAAS: No, H-a-a-s.

PN7

THE DEPUTY PRESIDENT: Right. That is important, we can't get that wrong. Mr Flanagan?

PN8

MR FLANAGAN: Thank you, Deputy President. Deputy President, this application seeks to vary the Produce Award to remove from it what may be an ambiguity at the moment. The award currently identifies in clause 1 of Part III, if I could take you to that particular section, Deputy President?

PN9

THE DEPUTY PRESIDENT: Part III?

PN10

MR FLANAGAN: Yes.

PN11

THE DEPUTY PRESIDENT: The application says - - -

PN12

MR FLANAGAN: We seek to vary Part V, but if I can just explain what the difficulty is.

PN13

THE DEPUTY PRESIDENT: Okay, yes, III.

PN14

MR FLANAGAN: The difficulty is that if you look to clause 1 of Part III, you will see that you have a paragraph (a) which deals with a number of wage group levels starting at level 1, Stores Employee grade 1 going through to level 8, and then following that you have the definitions for those levels which takes you over a number of pages. And in particular, at level 6, level 7 and level 8, tradespersons are identified as a classification within the wage rates structure. If you then go over to Part V, clause 1 - - -

PN15

THE DEPUTY PRESIDENT: Yes.

PN16

MR FLANAGAN: - - - you will see that in subclause (a) it identifies work for Stores Employees. If you go over to subclause (b) it talks about the arrangements for auctioneering, soliciting orders for articles, goods or materials in subclause (b). In subclause (c) it talks about employees undertaking the task of driving and in subclause (d) it talks about the hours of work for clerical and administrative employees.

PN17

THE DEPUTY PRESIDENT: So there are no hours for tradespersons?

PN18

MR FLANAGAN: Well, we don't accept that. In the union's view, the reference for Stores Employees is a generic term. However, we do accept that it is currently ambiguous and the intention of this application is to remove that ambiguity. Now, the history of the award in its current form is that in matter T7906/1998 and T8963/2000, both of which were subject of an order number 3 of 2000 by the Commission, and that was by - the effect of those two applications was firstly to simplify the award or re-format it consistent with the form which was identified by the State wage case as being the way that awards should be referenced going forward, and the second aspect of it was to commence the minimum rates adjustment process.

PN19

Now, prior to that in T9062/2000 there was a variation which pre-dated the award simplification process and the minimum rates adjustment process and what one finds when one looks at that in T9062/2000, there is actually no trades classification at all. So clearly what the parties have intended to do consistent with the Produce Award being an industry award was to cater for the tradespeople working in the industry and it is on that basis that the union remains of the view that the term Stores Employee in subclause (a) of clause (1) is in fact a very generic term for all employees in the store. However, to overcome what could be a possible alternative view, the application seeks to remove any argument about what in fact the position is. What I would seek to do is tender an amended application if I may.

PN20

THE DEPUTY PRESIDENT: I have got it.

PN21

MR FLANAGAN: Yes. Now, in the application originally filed by the union, the application sought to move the term "Stores Employees" - - -

PN22

THE DEPUTY PRESIDENT: And where would that leave the drivers, for example?

PN23

MR FLANAGAN: Yes, that is right, we would say all employees other than clerical and administrative, that was not adequate. Following discussions with the TCCI the union has re-worded the application so that we delete the term "Stores Employee" in lieu thereof insert "all employees

except where otherwise listed in Part B, C or D of this clause. So that the effect of the application is to make it clear and unambiguous that in fact the provisions of subclause (a) do apply to tradesmen if in fact there was any doubt prior to that.

PN24

THE DEPUTY PRESIDENT: And you have just provided this today; is that right?

PN25

MR FLANAGAN: That is correct, yes.

PN26

THE DEPUTY PRESIDENT: Okay. Well, I will note that - I have written on it that it is an amended application received as at today's date.

PN27

MR FLANAGAN: Thank you.

PN28

THE DEPUTY PRESIDENT: Okay.

PN29

MR FLANAGAN: So in those circumstances, Deputy President, what we say is that there is no obligation which is created from this application which did not previously exist, but in any event it is clearly in the public interest that the conditions of employment contained within an award are clear to those that apply the award and define the rights and obligations respectively for employers and employees, and in those circumstances the application should be approved. If it pleases the Commission.

PN30

THE DEPUTY PRESIDENT: Thank you. Mrs Haas?

PN31

MS HAAS: Thank you, your Honour. We do take the alternative view that the award was unclear and that there was no hours for the tradespersons, but we do thank the union for getting the application in so promptly and for their assistance in this matter. And we consent to the application.

PN32

THE DEPUTY PRESIDENT: Thank you. Now, so it is by consent, there is no need for me to make any ruling as to what it said or didn't say before, and the award will be varied in the manner that is sought, and the order and written decision will be issued shortly. Thank you.

PN33

MS HAAS: Thank you.

ADJOURNED INDEFINITELY

[9.50am]