

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s.63 application for determination of award interest

The Australian Institute of Marine & Power Engineers
(T.3871 of 1992)

SHIPPING AWARD
MARINE BOARDS AWARD

DEPUTY PRESIDENT A. ROBINSON

HOBART, 15 July 1992

Award interest

REASONS FOR DECISION

On 25 June 1992 the Registrar issued Reasons for Decision* and granted registration to The Australian Institute of Marine and Power Engineers (AIMPE). In doing so he indicated that a certificate of registration will be issued pursuant to Section 64(1) of the Act following the determination by a Commissioner of award interest.

The AIMPE now seeks an interest in both the Shipping and Marine Boards Awards and this matter has been referred to me pursuant to Section 63(10)(b) of the Act for hearing and determination.

I deal firstly with the application as it relates to interest in the Shipping Award.

Mr Matthews for the applicant organisation assured the Commission that the AIMPE includes members who are employees in the industry to which the scope of the Shipping Award applies. He gave estimated numbers and supportive information in this regard.

Similarly Mr Matthews confirmed that which is already on file in that the AIMPE has lodged with the Registrar a copy of its rules and constitution.

Evidence was given that membership is consistent with those rules and the AIMPE's constitution.

Further submissions dealt with satisfying the Commission that the organisation concerned being granted interest in this award would not prejudice the orderly conduct of industrial relations in Tasmania. In this regard particular reference was made to the fact that there had been proper discussions with The Australian Workers' Union, Tasmania Branch (AWU) and certain understandings reached.

No formal objections were made by any other organisation to the granting of interest in respect to the Shipping Award.

* TR437 of 1991

Having regard to all of these circumstances I am satisfied that the criteria contained in Section 63(10)(c) of the Act have been met and accordingly I determine that The Australian Institute of Marine and Power Engineers has an interest in the Shipping Award.

I turn now to the application as it relates to the Marine Boards Award.

As a preliminary matter the Tasmanian Confederation of Industries (TCI) sought first of all to enter an appearance as of right and secondly sought leave of the Commission to intervene in this matter.

Both appearance and intervention were denied for the following reasons:

1. Section 62(2) of the Act provides:

"(2) The Tasmanian Confederation of Industries shall be deemed to be an employer organisation registered under this Part and to have an interest in every award relating to private employers."

2. However, notwithstanding that general provision specific provisions of the Act going to both registration and award interest matters clearly convey that employer organisations may only be heard in relation to applications by other employer organisations. The same situation exists in relation to employee organisations.

In this regard Section 63(2) provides that:

"On receipt of an application under subsection (1) [an association seeking registration], the Registrar shall -

*(a) if the applicant is an association of employees, serve on each employee organisation a notice in writing informing it that he has received the application and stating the names of the awards or industrial agreements, or both, which apply to the members of the applicant, as stated in that application pursuant to subsection (1)(a)(vii);
or*

(b) if the applicant is an association of employers, serve on each employer organisation a notice in writing informing it that he has received the application and stating the name of the awards or industrial agreements, or both, which apply to the members of the applicant, as so stated in that application."

(My underlining)

3. And later in dealing with objectors to registration Section 62 of the Act provides:

"(6) Subject to subsection (7), where an application under subsection (1) is made by -

(a) an association of employees, an employee organisation; or

(b) an association of employers, an employer organisation, other than a controlling authority,

may, as prescribed by the regulations, lodge in the office of the Registrar, within 14 days after the service on it of a notice under subsection (2), an objection, in writing, to the registration of the association to which the notice relates."

(My underlining)

4. Section 63(11) of the Act similarly makes a distinction between employer and employee organisations in that it provides (inter alia):

"(11) Before making a determination under subsection (10)(c), a Commissioner shall notify in writing -

(a) in the case of a determination of the awards which an employee organisation has an interest in, all the other employee organisations which have an interest in the awards stated in the application lodged by that employee organisation with the Registrar pursuant to subsection (1)(a); or

(b) in the case of a determination of the awards which an employer organisation has an interest in, all other employer organisations which have an interest in the awards stated in the application lodged by that employer organisation with the Registrar pursuant to subsection (1)(a),

and shall give them an opportunity to be heard in respect of the determination."

(My underlining)

It seems to me to be an illogical argument to suggest that TCI has a right to be heard in present circumstances when Section 63(11) clearly states that only employee organisations are to be notified of hearings involving an application by another employee organisation. And the concluding words of that Section make it clear that only organisations required to be notified are to be given an opportunity to be heard.

5. Section 27(2) of the Act is a further general provision which states that:

"An organisation may, with the leave of the Commission, intervene in any proceedings before the Commission."

This is an enabling provision which allows the Commission to exercise a discretion in appropriate circumstances.

In my experience demarcation type disputes as this one is, are difficult enough to resolve when the competing parties are trade union organisations. If an employer organisation takes a formal position in such circumstances then history suggests such a stance is unlikely to be conducive to the resolution of matters. Indeed I believe the involvement of a third party would, in the majority of cases, be more likely to exacerbate the problem than assist in its resolution.

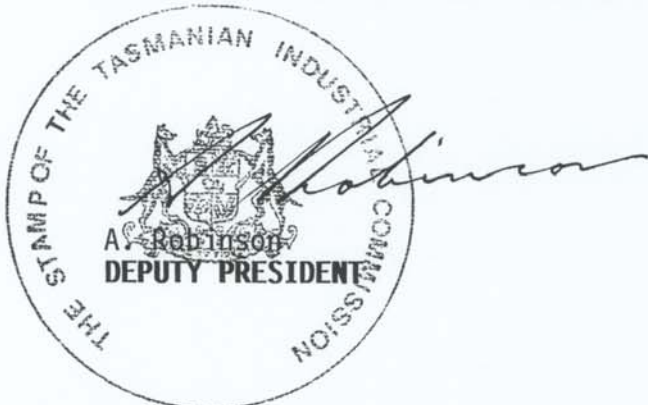
Next I deal with consideration of the application as it relates to merit.

The Merchant Service Guild of Australia - Victorian and Tasmanian Branch, opposed the granting of interest to the AIMPE in the Marine Board Award.

After brief submissions the Commission indicated to the parties that they should consult at an appropriate level and report progress at a later time.

Both organisations agreed to this suggestion and the hearing was adjourned to a date to be fixed on this basis.

The parties should advise the Commission when they are ready to proceed and this matter will be then relisted for hearing.



Appearances:

Mr I. Matthews for The Australian Institute of Marine and Power Engineers.

Mr G. Cooper for The Australian Workers' Union, Tasmania Branch.

Mr B. Smith for the Merchant Service Guild of Australia - Victorian and Tasmanian Branch.

Date and Place of Hearing:

1992:
Hobart
July 3