

AUSCRIPT AUSTRALASIA PTY LTD
ABN 72 110 028 825

Suite 25, Trafalgar Centre 108 Collins St HOBART Tas 7000
Tel:(03) 6224-8284 Fax:(03) 6224-8293

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TRANSCRIPT OF PROCEEDINGS

O/N 2233

TASMANIAN INDUSTRIAL COMMISSION

PRESIDENT P.L. LEARY

T No 12312 of 2005

TOTE TASMANIA RACECOURSE AWARD 2005

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Australian Workers Union, Tasmania Branch
for the making of the above award**

HOBART

12 NOON, TUESDAY, 25 OCTOBER 2005

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

HEARING COMMENCED

[12.00pm]

PN1

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

PN2

MR P. MAZENGARB: I am from the Tasmanian Chamber of Commerce and Industry Limited. With me is MS J. SOWRY from TOTE Tasmania.

PN3

THE PRESIDENT: Thank you. Mr Flanagan?

PN4

MR FLANAGAN: Thank you, President. President, the union seeks the establishment of the award in the terms of the document attached to the application, but we do in fact seek to provide you with an amended document.

PN5

THE PRESIDENT: After we have been through it with a fine-toothed comb, yes.

PN6

MR FLANAGAN: A very limited change, President.

PN7

THE PRESIDENT: Really?

PN8

MR FLANAGAN: Very.

PN9

THE PRESIDENT: All right. So if I mark that document exhibit A1 then we will know what document we are referring to.

EXHIBIT #A1 AMENDED AWARD ATTACHED TO APPLICATION

PN10

MR FLANAGAN: Now, if I can just identify the differences between A1 and the schedule attached to the application. The first difference appears on page 2, clause 5, Award Interest. And if I can take you on page 2, clause 5, Award Interest, down to subclause 2, we have inserted a new subclause (d):

PN11

The following private employer is deemed to have an interest in the award pursuant to section 66(1): TOTE Tasmania Pty Limited.

PN12

THE PRESIDENT: So is TOTE a GBE or a private - - -

PN13

MR FLANAGAN: It is a State-owned corporation.

PN14

THE PRESIDENT: Is it? Right.

PN15

MR FLANAGAN: Which has as its shareholder the Minister for I think Infrastructure, Energy and Resources and the Treasurer, yes. And TOTE is a body which was established as a consequence of some substantial restructuring of the racing industry in Tasmania. What had occurred, because of the previous structure of the industry, when the union commenced negotiations with the employer, we had several different employment arrangements in place depending on which particular track the employees were engaged in.

PN16

THE PRESIDENT: I see.

PN17

MR FLANAGAN: This award in fact regulates the employment of approximately 15 people. However, there were three separate employment arrangements in place for those employees depending on where they were, who historically had been their employer before TOTE, and administratively it was not what you would call efficient, President. So the discussions for the development of this award commenced in January this year. They have been reasonably involved. What the parties have attempted to do is to develop single employment arrangements to apply to those employees, to address inequities which had occurred because of the history of the different employment arrangements, and to have an efficient set of employment conditions across TOTE's operations in the track maintenance area.

PN18

THE PRESIDENT: So all of the employees that will be covered by the award are employees of TOTE?

PN19

MR FLANAGAN: That is correct.

PN20

THE PRESIDENT: They are, yes.

PN21

MR FLANAGAN: Yes. So you will see that the employment is in relation to the formation and maintenance of racecourse tracks.

That award - or that work prior to the establishment of this award has been traditionally "sort of" regulated, if I can put it that way.

PN22

THE PRESIDENT: Define "sort of".

PN23

MR FLANAGAN: Well, it has been applied as a minimum, but there has been additional arrangements in place.

PN24

THE PRESIDENT: Okay.

PN25

MR FLANAGAN: And the two principal awards which have had application in the past is the AWU Tasmanian Racecourse (Track Maintenance) Award, and in respect of that award there is an application to vary it to exclude the courses covered by this award, and that application is before Commissioner Mansfield of the Federal Commission tomorrow.

PN26

THE PRESIDENT: Yes.

PN27

MR FLANAGAN: And the other award which had regulated some of the employees was the AWU Tasmanian Public Sector Award which was rescinded by the Federal Commission last week, Deputy President.

PN28

THE PRESIDENT: Okay.

PN29

MR FLANAGAN: So we are attempting to move forward, if you like, with a commonsense arrangement for employment having regard for the restructuring of the industry. Now, the other change which appears in this document compared to the document which was attached to the application is in clause 8, Wage Rates. You will see in the document attached to the application it talks about a current rate - - -

PN30

THE PRESIDENT: Yes.

PN31

MR FLANAGAN: - - - and then identifies in a separate column 1 August '05. Exhibit A1 simply removes the reference to the current rate because it is now redundant.

PN32

THE PRESIDENT: Yes. And the rates reflect the safety net for the last State wage case?

PN33

MR FLANAGAN: That is correct. That is right, 1 August is clearly the link with the State wage case.

PN34

THE PRESIDENT: Yes.

PN35

MR FLANAGAN: And they are the rates in fact which - rates of pay which have in fact been applied by TOTE since the first full pay period on or after 1 August this year. So it reflects the reality.

PN36

THE PRESIDENT: So is it a paid rates award, basically?

PN37

MR FLANAGAN: It is a minimum rates award, but that is the minimum which has actually been observed. So other than that, President, I think the award is quite self-explanatory. It is built upon the employment arrangements which have been in place. The conditions which have been inserted in the award are consistent with the Commission's standards, and there is nothing contained within the award which would offend the public interest. So what the parties are seeking is that the award be made operative. In clause 16 of Operation, it says:

PN38

This award shall come into operation as and from the beginning of the first pay period commencing on or after - - -

PN39

THE PRESIDENT: "To be advised".

PN40

MR FLANAGAN: - - - "to be advised". We are hoping that the Commission will be prepared to have it apply from 1 August this year.

PN41

THE PRESIDENT: That depends what happens tomorrow, too.

PN42

MR FLANAGAN: Yes.

PN43

THE PRESIDENT: Because if the applications before the Federal Commission are not successful, this becomes a non-event. Not that I am suggesting they may not be successful, but just in case, we need to be aware of that.

PN44

MR FLANAGAN: Yes. Well, perhaps if the parties could confirm the outcome of tomorrow's proceedings and then if the application before Commissioner Mansfield is acceded to by the

Federal Commission, then if we inform you and ask then on that basis that the award be made operative from 1 August.

PN45

THE PRESIDENT: If it is made operative from the first pay period on or after 1 August, is there any impact or is that merely just a notional day?

PN46

MR FLANAGAN: No, it is notional. It is just that it doesn't seem to be logical to have rates of pay which apply from 1 August and then an award which is operative after that date.

PN47

THE PRESIDENT: Well, they are just the rates of pay. It doesn't have to have an operative date in there for that in that particular clause.

PN48

MR FLANAGAN: Well, that is true.

PN49

THE PRESIDENT: But if there is no impact, it doesn't make much difference.

PN50

MR FLANAGAN: No, there is no impact in a practical sense.

PN51

THE PRESIDENT: No. Well, I mean by impact there is no backpay or accrued entitlements.

PN52

MR FLANAGAN: Yes, those.

PN53

THE PRESIDENT: All right. Can I just raise a couple of things with you? In a number of the clauses, it refers to "this agreement". That should change to "this award".

PN54

MR FLANAGAN: "This award", yes.

PN55

THE PRESIDENT: The registrar has been through this very judiciously, and so I can tell you all of the provisions that have "agreement" instead of "award", so that can be changed. That doesn't change the outcome. There are a couple of queries. There is no minimum wage and no supported wage clause in the award. They should be included.

PN56

MR FLANAGAN: Yes, they should.

PN57

THE PRESIDENT: Okay, we can do that. The other one was, there is a provision for redundancy. In the State jurisdiction of course, redundancy is dealt with on a case-by-case basis. Do you have a view on that?

PN58

MR FLANAGAN: Yes, we do. The parties have agreed on the quantum of the redundancy. I will just - - -

PN59

THE PRESIDENT: There are two weeks for each year of service, by the looks of it.

PN60

MR FLANAGAN: Yes. We are of the view that redundancy is an industrial matter for the purposes of section 3 of the Act. Certainly where there are disputes between an employer and the union in relation to redundancy, then that matter is the subject of outcomes determined by the Commission. However, in these negotiations with TOTE, redundancy was not an insignificant issue and the two weeks for each year of service in fact reflects, I think - and Ms Sowry can correct me - arrangements which are contained within the section 55 agreement with the CPSU in relation to white-collar employees.

PN61

THE PRESIDENT: Okay. As long as the employees covered by the award know that that is their redundancy and that they don't then have the right to seek an application.

PN62

MR FLANAGAN: No, that is correct. As I said, it was not an insignificant consideration.

PN63

THE PRESIDENT: No.

PN64

MR FLANAGAN: Previously the employees were restricted to the redundancy provisions of the Federal minimum, and so in that context these arrangements represent - are not - - -

PN65

THE PRESIDENT: An improvement.

PN66

MR FLANAGAN: Yes, an improvement. So we see the award, although technically I take the point that you raise, that because it is an award it seeks minimums, it would not be the position where the union would be pursuing additional payments if redundancy was to occur. We would only be doing that by agreement with

TOTE and we wouldn't anticipate achieving that agreement given that we have agreed to these arrangements.

PN67

THE PRESIDENT: All right. I will think about that one, only inasmuch as it may have an impact elsewhere, but don't worry about that. The other one was schedule A. Some of the allowances need updating, but I can give you the information on that.

PN68

MR FLANAGAN: Thank you. We are happy to update them, President.

PN69

THE PRESIDENT: Yes, they update by increases which I presume have come out of the last State wage case.

PN70

MR FLANAGAN: Yes, and a lot of their history actually goes back to the - - -

PN71

THE PRESIDENT: And the General Services Award.

PN72

MR FLANAGAN: That is right.

PN73

THE PRESIDENT: Yes.

PN74

MR FLANAGAN: That is right.

PN75

THE PRESIDENT: Yes. So they are intended to reflect the provisions in that award anyway.

PN76

MR FLANAGAN: That is right.

PN77

THE PRESIDENT: Yes. So that is not a problem.

PN78

MR FLANAGAN: And just on that, the history of it is that the AWU Tasmanian Public Sector Award had identical provisions, if you like, to the General Conditions of Employment Award and there was a link there.

PN79

THE PRESIDENT: Yes.

PN80

MR FLANAGAN: Perhaps over time the parties have not been - not kept an eye on the General Conditions of Employment Award to the extent that we perhaps should have been.

PN81

THE PRESIDENT: Yes. There is not much in it, but there are some differences.

PN82

MR FLANAGAN: Yes.

PN83

THE PRESIDENT: All right.

PN84

MR FLANAGAN: Thank you.

PN85

THE PRESIDENT: Thank you.

PN86

MR FLANAGAN: So in those circumstances, President, the union would seek the making of the award. It does not offend the public interest. It does not offend the wage fixing principles, and we would ask that the Commission approve the award. If it pleases.

PN87

THE PRESIDENT: Thank you. Mr Mazengarb?

PN88

MR MAZENGARB: Thank you, Madam President. From the perspective of the TCCI, more particularly TOTE - the TCCI hasn't been involved to any great extent in these discussions, but certainly I have been advised by TOTE as reflected by Mr Flanagan that there have been extensive and worthwhile negotiations that commenced back in January of this year. Just by way of background, President, it may assist you to be aware that TOTE Tasmania has accepted the transfer of a number of racing facilities from individual race clubs.

PN89

Now, as a consequence of the transfer of these racing facilities to TOTE Tasmania, TOTE has become responsible for staff working at these various sites. TOTE Tasmania was required to engage the transfer of staff under their existing terms and conditions, and accordingly the company now employs staff performing the same duties at different locations under different awards. This has resulted from TOTE's perspective in the inconsistent employment terms and conditions across the company, which they find to be somewhat intolerable.

PN90

Now, the staff located at Tasman Park - which as I understand was previously Mowbray - Longford and Carrick are now employed under the AWU - well, they were employed under the AWU Public Sector Award 1986. Staff employed at Elwick and Brighton are generally employed under the Tasmanian Racecourse Maintenance Award 2002. While not employed by TOTE Tasmania, staff at the Devonport Race Club are employed under a separate award and we will be addressing that before Commissioner Mansfield tomorrow, as indicated by Mr Flanagan.

PN91

The two awards currently applicable to TOTE Tasmania have differential pay scales and classification structures and variable clauses on workplace practices. The new award that is before you today is proposed to simplify the current industrial environment for TOTE Tasmania and the management of its sites, and to provide consistent pay and classification structures across all racing venues. The wage increases for both current awards have occurred as a result of National and State wage cases.

PN92

In both instances, the AWU - Australian Workers Union - is respondent to both awards. The majority of staff affected by the proposed new award are those in the southern workplaces where wages are currently lower than for staff employed in the north of the State. Through the negotiations the Australian Workers Union and TOTE Tasmania have recognised the need for flexibility for TOTE to change its business operations. To that effect, the proposed new award provides a solid foundation for future negotiations, given that the new award as we are requesting is a combination of the two current awards in two different jurisdictions - that is, the Federal and the State jurisdictions - and that in accordance with the public interest test which is applied by the Commission to ensure that taking into account all the relevant factors, employees covered by the award are no worse off as a consequence of the change.

PN93

The important changes to the operating environment as a result of the new award are as follows. It consolidates all racecourse maintenance employees on to one award and so provides for consistent conditions across TOTE Tasmania operations. It retains the current State wage case increase mechanism for wages, and what that is going to be in the future, I am not quite sure. It provides a solid foundation to commence enterprise bargaining next year. That is deemed necessary by the parties in relation to the possible section 55 provisions of the State Industrial Relations Act.

PN94

It provides for work on Saturdays as ordinary hours at time and a half for all day work, in recognition of the industry being a seven-

day-a-week operation. It provides very importantly from the perspective of the employees for career development and formal qualifications, development for key positions on the premier sites and conditions such as redundancy, redeployment and consultation have been made consistent with the current section 55 agreement covering the bulk of the operations staff in the wagering side - the wagering side of the operations.

PN95

The discussions to date with the union have been around establishing a consistent approach across the State, and a foundation from which further efficiencies and workplace improvements can be made. From the perspective of TOTE Tasmania, they believe this is a significant step in consolidating their approach to track maintenance and operation. I concur with Mr Flanagan, we don't believe in our examination that the application offends the wage fixing principles nor the public interest requirements as stipulated by section 36 of the Industrial Relations Act.

PN96

Whilst there have in the past been issues relative to operative date, my organisation generally does not like a retrospective operative date, but in light of the negotiations and the undertakings that have been given by TOTE Tasmania that the operative date for wage increases and conditions will be the first full pay period on or after 1 August 2005, certainly from our perspective we have no objection to that request made by Mr Flanagan.

PN97

THE PRESIDENT: And that is on the basis that there is no impact - or financial impact?

PN98

MR MAZENGARB: That is on the basis - as I understand it, that is the position that TOTE have taken - - -

PN99

THE PRESIDENT: Yes.

PN100

MR MAZENGARB: - - - and they are more than happy with that. And I can give an assurance as I am standing here that there will be no detrimental effect on employees as a result of the backdating, and for that matter there will be no detrimental effect on the employer.

PN101

THE PRESIDENT: Yes.

PN102

MR MAZENGARB: With regard to your comments, Madam President, with regard to minimum wage being inserted into the

award together with supported wage, the TCCI and TOTE Tasmania do not object to that. In actual fact, it has merely been an administrative oversight. There was no malice in relation to that, it was just something we missed. With regard to redundancy, whilst it is not usual to have redundancy in State awards as you have pointed out, because of the provisions provided under section 29 of the Act, the purpose of putting in redundancy as I am advised is that it is to maintain consistency across the board so that all employees are being treated equally. That is why it has been put in there. There is no, again, reason for doing that other than to maintain a degree of consistency. I think with regard to the redundancy provision as it is currently reflected in A1, except for the cap at the top, it generally reflects the decisions that have been emanating from this Commission since its inception in - - -

PN103

THE PRESIDENT: Not that there is any concession there is a standard.

PN104

MR MAZENGARB: No, certainly. But with regard to other conditions pertaining to redundancy, it is consistent and certainly not inconsistent with decision that emanated from this Commission since its inception in 1985. With regard to the updating of the allowances in schedule A, again the TCCI and TOTE Tasmania do not object to such updating in relation to changes that have already occurred in other areas. And in relation to that we express our appreciation to the registry and more particularly the registrar in bringing those errors - or omissions, I should say, as distinct from errors - to our attention.

PN105

So in general, Madam President, as I indicated the TCCI and more particularly TOTE Tasmania do not oppose the application. With regard to the new exhibit - sorry, the new award that has been tabled and identified as A1, with regard to those specific changes there, with regard to clause 5 and the identification of TOTE Tasmania as a private employer having an interest in the award, we agree with that. I have already addressed you in relation to the date of operation at clause 6. And with regard to the other amendment, as I understand which was under clause 8(1) with regard to just having the one rate relative from 1 August, we have no objection to that.

PN106

THE PRESIDENT: Yes.

PN107

MR MAZENGARB: I suppose the - this is not an objection - I suppose the only thing there for a point of clarification where it says:

PN108

Weekly wage rate 1 August 2005 -

PN109

I would presume that means the first full pay period on or after 1 August 2005.

PN110

THE PRESIDENT: I am presuming.

PN111

MR MAZENGARB: But as it doesn't say that, I think that should be just clarified for the point of the record.

PN112

THE PRESIDENT: Yes.

PN113

MR MAZENGARB: If the Commission pleases.

PN114

THE PRESIDENT: All right, thank you. Did you want to add anything else?

PN115

MR FLANAGAN: Yes. Look, I would simply confirm that the rate identified in clause 8 is from the first full pay period, and that we would reserve the right to assert in future proceedings that two weeks for each year of service is a minimum standard in this jurisdiction.

PN116

THE PRESIDENT: I won't comment on that.

PN117

MR MAZENGARB: Neither will I.

PN118

THE PRESIDENT: Yes. Congratulations on getting a single award together. I think that has been a worthwhile exercise. And of course, its future depends somewhat on what happens tomorrow, not that I am concerned that it won't - that the applications won't be successful - but subject to what happens in those proceedings, the award can be made with a couple of provisos that: one, I just want to check the rates. As you know, I have a constant battle in this jurisdiction as to whether we have minimum rates or paid rates awards. I start the battle and I seem to lose it regularly, but I don't give up on it. So I just want to check that. It won't make any difference to the outcome as far as you are concerned. And also I need to go and read the principles about redundancy to make sure that by inserting in this award isn't going to create a problem for other awards. There is another method if we need to consider that which we can deal with at a later date.

PN119

But subject to those two provisos, and that is just a case of me finding the time to have a look at those two issues, and subject to tomorrow's proceedings before Commissioner Mansfield, I have no difficulty with making the award and I am satisfied that it does not offend the public interest, and it will take effect from the first full pay period on or after 1 August providing that everything goes according to Hoyle. That matter is adjourned. What I will do is I will give you a copy of where the award says agreement and a copy of annexure A.

PN120

MR FLANAGAN: Yes. We have got it in electronic form, so we can make those amendments easily and email it back.

PN121

THE PRESIDENT: Yes, it is just, you know, search, word find, all that sort of stuff.

PN122

MR FLANAGAN: Okay.

PN123

THE PRESIDENT: This matter is adjourned, thank you.

ADJOURNED INDEFINITELY

[12.25pm]

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