

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

AUSCRIPT

TRANSCRIPT OF PROCEEDINGS

O/N 2702

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER J.P. McALPINE

T No 12578 of 2006

T No 12571 of 2006

MEANDER DAM REDEVELOPMENT PROJECT ENTERPRISE AWARD

**Applications pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Construction, Forestry, Mining and Energy
Union, Tasmanian Branch to vary the above award re the
Meander Dam Redevelopment Project Enterprise Award**

HOBART

9.30 AM, MONDAY, 20 MARCH 2006

Continued from 28.2.06

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

HEARING COMMENCED

[9.30am]

PN4

MR B. WHITE: I appear on behalf of the CFMEU.

PN5

MR P. MAZENGARB: I appear on behalf of the Tasmanian Chamber of Commerce and Industry Limited.

PN6

THE COMMISSIONER: Okay. Thank you. You are not trying to get a place on Len's cabinet, are you - - -

PN7

MR WHITE: Trying to.

PN8

THE COMMISSIONER: - - - with a moustache?

PN9

MR WHITE: Oh, while I was on holidays I grew a beard, and then when I shaved it off the razor blades got blunt.

PN10

THE COMMISSIONER: Right. Okay. Fire away.

PN11

MR WHITE: I haven't bought a new packet yet.

PN12

THE COMMISSIONER: Tell me about this award.

PN13

MR WHITE: I am not sure, Commissioner, if Robert Flanagan is coming from the AWU. I did believe on Friday that he was turning up, but we start with the award that we emailed to the Commission, just to start with, on 15 March contained a few errors.

PN14

THE COMMISSIONER: Yes.

PN15

MR WHITE: I thought we had emailed another copy down this morning, but evidently it hasn't arrived yet, but I will just explain what those couple of errors were. First off page 4 was a blank page for some reason. I don't understand computers well enough to know why that happened, but that has been fixed. At clause 12, Wage Rates, we have changed that to read - - -

PN16

THE COMMISSIONER: Sorry. Clause 12? I have got 11. Part II, Wage Rate.

PN17

MR WHITE: Sorry, it is. Yes, that was one of the mistakes in there for some reason. The clauses were wrong. Part II, clause 11, Wage Rates - - -

PN18

THE COMMISSIONER: Yes.

PN19

MR WHITE: - - - has been changed to read, "FFPP," first full pay period after - the date 1.1.2006 right the way across. And - - -

PN20

THE COMMISSIONER: Sorry, the calculation is first full pay period after 1.1. - - -

PN21

MR WHITE: 2006.

PN22

THE COMMISSIONER: Yes.

PN23

MR WHITE: And a similar change all the way across, the first full pay period after 1.1.06.

PN24

THE COMMISSIONER: Okay. Well, I have got that. That is okay.

PN25

MR WHITE: And page 56 I would believe it would be, Fares and Travel, which is clause 47, a similar change. The first full pay period after 1.1.2006 right the way across.

PN26

THE COMMISSIONER: And it should be what?

PN27

MR WHITE: That is what we have changed it to.

PN28

THE COMMISSIONER: That is what it should be?

PN29

MR WHITE: Yes.

PN30

THE COMMISSIONER: Shouldn't the date change, or shouldn't it be over three years now:

PN31

The daily fares and travel allowance shall be \$20 per day after the first full pay period 1.1.2006, up to the first full pay period 1.6.2006.

PN32

I would have thought that was right.

PN33

MR WHITE: I am just trying to find the clause again.

PN34

THE COMMISSIONER: 47.

PN35

MR WHITE: What was the question there, Commissioner?

PN36

THE COMMISSIONER: Well, you said it should be 1.1.2006 right across.

PN37

MR WHITE: No, no, it changes.

PN38

THE COMMISSIONER: Yes.

PN39

MR WHITE: Then it is first full pay period 1.6.2006. So it is an increase of \$1 in June this year, and then the first full pay period after 1.6.07.

PN40

THE COMMISSIONER: Yes.

PN41

MR WHITE: That is right.

PN42

THE COMMISSIONER: That is right?

PN43

MR WHITE: That is right.

PN44

THE COMMISSIONER: Yes, okay. Well, that is what I have got. Did the original just have 1.1.2006 right across?

PN45

MR WHITE: What we originally had on there was the increase was on that date, on 1.1.2006.

PN46

THE COMMISSIONER: Oh, okay.

PN47

MR WHITE: But it was pointed out to me that for administrative purposes for the paymasters - - -

PN48

THE COMMISSIONER: It is the first full pay period.

PN49

MR WHITE: - - - and we don't want to put them off side.

PN50

THE COMMISSIONER: Yes. No, that is fair enough.

PN51

MR WHITE: So, as I said, that amended document should have come through today. Oh, there was one other change, a minor change, a word changed to a word. Clause 29, if it is still clause 29 in this amended document.

PN52

THE COMMISSIONER: We can work?

PN53

MR WHITE: It is clause 28, sorry, now. Clause 28 on page 29. It was sub-clause D, the second line did say, or the sub-clause D said:

PN54

Provided that where a job finished after proceeding on shift work for more than five consecutive days, or the employer -

PN55

the original that we sent down did say "the employee," instead of, "the employer." Now, I am not sure whether the document you have got there has got the word changed to employer, or still employee.

PN56

THE COMMISSIONER: No, it is fine. I have got employer, yes.

PN57

MR WHITE: It was just a typo. As far as the award itself goes, Commissioner, we submit that it does not offend the public interest, and it complies with the wage fixing principles. The intention of the award is to prescribe wages and conditions for workers employed on the Meander Dam construction, and associated site works. The Meander Dam Development Project Enterprise Award is a consent award. The relevant parties have extensively consulted and negotiated the matter and reached agreement on the content of the award before the Commission. And we request your consent in the making of the Meander Dam Development Project Enterprise Award with an effective date beginning on 15 March 2005.

PN58

THE COMMISSIONER: Okay. Thank you.

PN59

MR WHITE: I haven't got anything else, thank you, Commissioner.

PN60

THE COMMISSIONER: I have got a lot, but I will hear from you first.

PN61

MR WHITE: Right.

PN62

MR R. FLANAGAN: I appear on behalf of the Australian Workers' Union, Tasmania Branch.

PN63

MR FLANAGAN: Commissioner, the AWU has an application before the Commission, which is matter number 12571, which in fact is in identical terms to the application of the CFMEU. I would simply seek to join that application to this matter, and also to support and endorse the submissions of Mr White on behalf of the CFMEU. The Meander Dam is an important project for the State of Tasmania, and in our view it is desirable that there be common conditions of employment across the site, and this award is intended to facilitate that.

PN64

The project involves not only the actual construction of the dam wall but there is also roading activity, quarry work and batching operations and pre cast concrete operations which will be conducted in and about the site for the purposes of the dam wall and this award is intended to regulate all of that activity so the AWU supports and endorses the award in terms of the amended schedule which, by the sounds of it you may not yet have, but if that is the case
- - -

PN65

THE COMMISSIONER: Well, certainly the amendments you have suggested I have in this copy.

PN66

MR FLANAGAN: Well, if you have it then we - - -

PN67

THE COMMISSIONER: But we haven't received one today, have we?

PN68

THE COMMISSIONER: It hadn't come when I came down to the hearing.

PN69

THE COMMISSIONER: But certainly whatever you said was already in what I have here.

PN70

MR FLANAGAN: Yes, it sounds like you have the correct document so we would support the making of an award in those terms. If it pleases the Commission.

PN71

THE COMMISSIONER: Okay. Mr Mazengarb?

PN72

MR MAZENGARB: Thank you, Commissioner. In getting to my feet can I go and say that I offer an apology firstly as I understand there was a hearing before yourself on 28 February in relation to these two matters. The TCCI did not attend that hearing on that day and that is certainly no disrespect to the Commission. It was my understanding that the union parties to the award application in actual fact were going to ask for that hearing on that day to be vacated and on that understanding we didn't turn up. We did find that there was a hearing so I certainly apologise to the Commission for that. As I said, there was no intention of any disrespect from our perspective.

PN73

THE COMMISSIONER: Yes.

PN74

MR WHITE: Commissioner, I should indicate that whilst Mr White indicated there have been extensive negotiation discussions I should indicate and put on record that there haven't been a lot of discussions with the Tasmanian Chamber of Commerce and Industry Limited. As you are aware, pursuant to the Act we are respondent to all awards made by this Commission and that is why we are standing before you today. I do understand that there have been extensive negotiations between the principal contractor involved in the dam project and the instructions that I have received from that principal contractor is that they are in agreeance with the document that is before you.

PN75

Having said that I should indicate, and I suppose I should put on record that the TCCI has raised some issues of concern in relation to what is in the document. Having raised those - sorry, having raised those issues with the principal contractor they have assured me that they are happy with the issues that are covered by the document although, as I said, the TCCI does have some specific issues we have concerns with. Having said that we are not in opposition to the making of the award but it is on the strict understanding that as far as we are concerned it relates to a specific project site, that it is an award specifically for that area and that from the TCCIs perspective we would not anticipate nor would we want to see any precedent being used by the making of this award if it is made today through the applications that are before you, we would not want to see any precedent used from that award to be used in other areas in the private sector or for that matter, any other sector within the Tasmanian Industrial Relations system.

PN76

THE COMMISSIONER: Yes.

PN77

MR WHITE: I have had discussions with both Mr White and Mr Flanagan along those lines and certainly I would feel a lot more comfortable from the perspective of the TCCI if both those representatives here today put something on record to that effect and gave that indication to the Commission. If the Commission pleases.

PN78

THE COMMISSIONER: It is a pity that the main contractor isn't here because I have gone through it and as you can see I have quite a number of questions, but I don't know if they are at all relevant if you have been given instructions that they are comfortable with it. To me this turns the clock back about 20 years, getting 2 cents for this and 3 cents for that, it is - if that is what you and the contractor have agreed that is fine and I agree with Mr Mazengarb, that this should not be put down as a precedent for anything other than this particular venture.

PN79

It is - I just don't know how the contractor - the contractor is going to have to put on extra staff just to manage this, to take care of all the odd cents and dollars that are all around the place, but again, if the main contractor doesn't have a problem with it I don't really see where it's my role to pull it apart. It certainly - it doesn't offend the public interest, it might take an awful lot of work but it doesn't offend the public interest.

PN80

The wage-fixing principles it is in line with it is - in my view it really is turning the clock back to the clock watching days. Anyway, are you gentlemen in agreement that this is purely for this particular project and won't be used as a precedent or won't be tried as a precedent?

PN81

MR FLANAGAN: Commissioner, it is certainly the intention of the unions that this is an award to regulate the activity which is undertaken on site in the construction of roads, in the quarrying, in the batching, in pre cast and in the construction of the dam wall. It is not the intention of the unions to use this award to set any precedent for the Tasmanian Industrial Commission in its jurisdiction. It is a project award about a project and it goes no further than that. If it pleases the Commission.

PN82

THE COMMISSIONER: Okay. You are the same?

PN83

MR WHITE: Yes. I can't say anything to add to what Mr Flanagan said except that CFMEU endorses those comments.

PN84

THE COMMISSIONER: Okay. You are comfortable with that?

PN85

MR MAZENGARB: Yes. Just to clarify, Commissioner, I mean, from our perspective if the TCCI is representing its members we will be guided by what our members want with us giving them some guidance and I must go and say that I had lengthy discussions with the principal contractor in this where I was pointing out the concerns that I have but I have been assured by him or sorry, the representative of that company, on a number of occasions, that they are comfortable with the negotiations that are reflected in that agreement so from the TCCIs perspective we in effect take a bit of a back seat and say, well, we don't want to upset what you have negotiated as long as you understand some of the pitfalls that might be in there, which we have pointed out, but we are certainly not going to stand in the way of what has been negotiated, as I understand, in very good faith between the principal contractor and the unions. If the Commission pleases.

PN86

THE COMMISSIONER: Yes. I mean, I just want to put this data - I mean, I have got a whole mass of things. For example, section 46 drugs and alcohol:

PN87

An employee who is dangerously affected by drugs and alcohol will not be allowed to work until that person can work in a fit manner -

PN88

and further down it says:

PN89

If this happens three times the employee shall be given a written warning.

PN90

Three times. I mean, where is that with safety?

PN91

MR WHITE: Commissioner, that clause is taken out of the - what is called the building group of - the building group out of New South Wales, I think. It is a pretty common clause that we have used in agreements previously and it is probably about three or four years now admittedly, but it was recognised by the United Nations as one of the best in the world at the time.

PN92

THE COMMISSIONER: Yes. They are all sitting in an office with suits on, they don't have to work with say, people who are that way inclined. I have just to say, if I had - if I was in charge of that site I don't think I would be particularly pleased to be held personally accountable for the safety of people on that site when they give a guy - without even a warning - to get caught three times and then be given a warning.

PN93

MR WHITE: But it does allow - they are not allowed to work in an unsafe manner and allows for rehabilitation.

PN94

THE COMMISSIONER: Yes.

PN95

MR WHITE: - - - and allows for rehabilitation, recognises that we don't support - we certainly don't support the consumption of alcohol or drugs or people working in an affected manner but it recognises that that is an illness and allows people to be treated the same as any other illness.

PN96

THE COMMISSIONER: That I accept but I would hold grave fears for that person's work colleagues and other people on site. Look, the company have agreed to this. I think they are particularly ill advised but that is the agreement you hold with the company. Look, I am going to approve it on those grounds as of 20 March, that is when you want it done?

PN97

MR WHITE: 15 March.

PN98

THE COMMISSIONER: 15 March, yes, not a problem. Mr Mazengarb, it is not my position to tell you what your job is but might I suggest you have a long talk with your member.

PN99

MR MAZENGARB: Well, see therein lies the problem too, they are not a member, they are not a member of the TCCI so that makes it a little bit difficult, Commissioner.

PN100

THE COMMISSIONER: Okay.

PN101

MR FLANAGAN: Commissioner, if I could just comment on the issue you raised about safety.

PN102

THE COMMISSIONER: Yes.

PN103

MR FLANAGAN: Like Mr White the AWU is very committed to its members working in a safe and responsible way and the critical part of the clauses that you referred to was subclause (a) which requires that people in those circumstances not be permitted to work so that they are not a danger to themselves or any other employee and that is something we take very seriously. There are organisations and employers that take the view that employees in those circumstances should be punished and punished severely and on some cases they are sacked on the second occasion. We don't think that that is an appropriate way to deal with an illness.

PN104

Clearly people in that situation who are presenting in an inappropriate manner need assistance and that is what this clause is about so for our part we don't accept a suggestion or proposition in any way, shape or form, that this clause is inappropriate. In fact, we think it is an appropriate balance to ensure that there is safe and responsible work conducted by the employee without endangering their's or the lives of those that they work with. It balances that with the need to deal with the issue if it is ongoing and we certainly don't accept the standard that we see out there, in particularly non-union agreements and agreements promoted by employer organisations which provide for a much harsher way of dealing with that matter. I just wanted to put that on the record, Commissioner. If it pleases the Commission.

PN105

THE COMMISSIONER: That is fine. I think we have got to agree to disagree on the manner with which that should be dealt with. I acknowledge that obviously you don't condone drugs or alcohol on site. The process is the issue that I have a concern with but again, the employer has agreed with it. Look, it is approved as of 15 March. That is where it lies, I think. I will leave it there. That's it, thanks.

ADJOURNED INDEFINITELY

[9.55am]