



TASMANIA

Tasmanian Industrial Commission

Industrial Relations Act 1984

T Nos **9396 & 9397 of 2001**

IN THE MATTER OF an application by the Construction, Forestry, Mining and Energy Union, Tasmanian Branch to vary the Building and Construction Industry Award and the Building Trades Award, respectively

Re: expense-related allowances for the periods 1/7/98-30/6/99, 1/7/99-30/6/00 and 1/7/00-30/6/01

COMMISSIONER ABEY

HOBART, 22 February 2001

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING COMMENCED 9.35am

COMMISSIONER: I'll take appearances, please.

MR T. BENSON: If the commission pleases, TONY BENSON. I appear on behalf of the Construction, Forestry, Mining and Energy Union, Tasmanian Branch, commissioner.

COMMISSIONER: Thank you, Mr Benson.

MR R. FLANAGAN: If it pleases the commission, FLANAGAN R., for the Australian Workers' Union, Tasmania Branch.

COMMISSIONER: Thank you, Mr Flanagan.

MR R. ROLLINS: May it please the commission, RICHARD ROLLINS appearing for the Tasmanian Chamber of Commerce and Industry and on behalf of the Master Builders' Association.

COMMISSIONER: Thank you, Mr Rollins. Mr Benson?

MR BENSON: Commissioner, before I kick off this morning, I'd just like the commission to know that I've had discussions with the other parties and there have been some matters brought to my attention that we consider need changing - need amending - in the applications. I've agreed to that and once those amendments are read onto the record I understand that this will be a consent matter.

COMMISSIONER: Thank you. Mr Benson, before you go on, in my former life - and I'm going back a few years, there used to be one Building Trades Award, there now appears to be two. To save me the trouble of researching it, can you explain to me what's happened?

MR BENSON: You're going to love my answer, commissioner. It's something that I inherited.

COMMISSIONER: Oh, right.

MR BENSON: And at this very place in time, discussions are taking place with the relevant parties in relation to condensing those two awards.

COMMISSIONER: The scope seems to be similar. Are they covering different industries?

MR BENSON: As I understand it, commissioner, one of the awards was basically for off-site and one was for on-site. As I understand it.

COMMISSIONER: Okay. Well, we won't persevere with it.

MR BENSON: But I agree, it's very confusing.

COMMISSIONER: Right. Thank you. Okay.

MR BENSON: If I might start, commissioner, in terms of the amendments, if we could start with the Building Trades Award for a start - the 1998, 1999, 2000 inclusive - the award section of it - at
5 item 3 - that's clause 13 and 51 - compensation for clothes and tools.

COMMISSIONER: Just bear with me for one moment.

MR BENSON: It's the award variation. Item 3 - it's on the top of the second page.

COMMISSIONER: Thanks, Mr Benson.

10 MR BENSON: This applies to the whole application in terms of this award. Item 3(a) should include after the words 'of injury or illness' which is at the bottom of the first paragraph at (a) - it should include 'provided that an employee transporting his own tools shall take all reasonable care to protect those tools and prevent theft or loss'.

15 COMMISSIONER: Right. So those words should be included.

MR BENSON: They should be included, commissioner, yes. They were an omission from -

COMMISSIONER: Have you got a document that's got these changes in it or do you want me to do them on the run?

20 MR BENSON: I've got one document with them in here, commissioner, I haven't had time to provide extra copies this morning.

COMMISSIONER: No, that's all right. No, what we'll do is we'll proceed through the application. These changes are being recorded and then the order will be settled -

25 MR BENSON: I can hand these over to you at the end of the -

COMMISSIONER: We'll settle the order afterwards between yourself and my associate.

MR BENSON: Thank you, commissioner. At item 6, clause 15 and clause 52 - fares and travelling - subclause (k) - the third line - there is
30 a number 4 in the word 'the' which is the third word in on the third line. Just a typo, commissioner.

COMMISSIONER: Thank you.

MR BENSON: And at item 9 on the third line it reads 'or his representative no later than Tuesday of each wee - there is a 'k'
35 missing of the week there, commissioner.

Then if we move to the 1999 BTA award variation, commissioner, at item 7(2) - clause 23 and clause 55 - living away from home- distant work - the amount shown at the bottom of the first paragraph being \$41.60, it should be \$41.40.

5 COMMISSIONER: Thank you.

MR BENSON: Then we move to the 2000 award variation, item 9, the figure as shown at the bottom of that paragraph being \$27.50 should in fact be \$27.70. \$25.70. She's misprinted it again. She's misprinted it in this one. Goodness me. The figure shown as \$25.50, commissioner, should in fact be \$25.70.

ASSOCIATE: No, it shows \$27.50.

MR BENSON: It shows?

ASSOCIATE: \$27.50.

MR ROLLINS: It shows \$27.50.

15 MR BENSON: It should in fact be \$25.70.

MR ROLLINS: The 7 and 5 have been transposed.

MR BENSON: That's right. It should in fact be \$25.70.

COMMISSIONER: Thank you.

MR BENSON: While we're with the BTA, commissioner, if we can move now to the expense-related allowance calculation schedule for 2000 and the final page on that schedule which is clause 23 and clause 55 - living away from home - the final calculation there in the old rate is \$115.90. In fact, the calculation itself has been done on the annual basis rather than a quarterly basis and should be \$115.90 x 1.0436 which takes that figure to \$120.953 making the new rate \$121.00.

And the calculation beneath that one, commissioner, the old rate is \$16.70; the calculation is \$16.70 multiplied by that new calculation - 1.0436, making that \$17.428, taking the new rate to \$17.40.

30 If we might move now to the BCIA award variation, commissioner. The award variations from the 1998 to the 2000 period, commissioner, these variations will include all these award variations through the whole period. Item 8(f) - clause 24 - living away from home - there has been an omission there in part of the text. It should in fact read after the first sentence: *provided that the above return journey payment shall not be paid if the employee terminates or discontinues his employment within two months of commencement on the job or if he is dismissed through incompetence within one working week of commencing on the*

job or is dismissed for misconduct. Part of the text has been missed there, commissioner.

COMMISSIONER: Thank you.

5 MR BENSON: Now if we move to the award variation for 1999, item 7, clause 24 - living away from home - distant work, subclause (c)(ii), the amounts as shown at the bottom of the paragraph (ii) - \$41.60 should in fact read \$41.40.

COMMISSIONER: Thank you.

10 MR BENSON: Now if we move to the expense-related allowances schedule for 2000 in the BCIA - clause 24 - it's on the last page - we have a similar problem to the previous one in relation to the calculations in that area on the final page. \$115.90 in the old rate should be $\$115.90 \times 1.0436$ - the new rate being \$121.00 and the calculation beneath that should be \$16.70 multiplied by 1.0436 making that a new rate of \$17.40.

15 COMMISSIONER: Thank you.

MR BENSON: That's dealt with the amendments, commissioner. I understand that the matter is now a consent matter and the CFMEU as we stated in our submission, commissioner, was seeking to maintain the nexus with our national building construction industry award in relation to the state awards. We believe that the application is not against the public interest, nor the requirements of the *Industrial Relations Act 1984*.

20 All the variations are there, commissioner, the calculation schedules are all there. The CPI forms for those respective years are there and also the consent orders from the Australian Industrial Relations Commission in relation to those matters flowing into our national awards for those periods of time.

I believe that you have those documents with you there, commissioner.

30 We also believe that the applications conform with the allowance principles of the commission at 7.1- Existing Allowances, 7.1.1 - *Existing allowances which constitute a reimbursement of expenses may be adjusted from time to time where appropriate to reflect the relevant change in the level of such expenses.*

35 In terms of the application, commissioner, we would seek that the commission certify this, that the operative date be from today and that the rate that's inserted in the awards is the rate at the 2000-2001 level. Thank you, commissioner.

40 COMMISSIONER: Thank you, Mr Benson. Just by way of explanation, the grounds for your application talk about movements in

the CPI over the period 1 July 1998 to 1999 and 1999 to 2000 and then July 2000 to June 2001. Now I haven't analysed this but are you saying that the figures in the document headed up 2000, that comprehends price movements up to June 2001 this year?

5 MR BENSON: No.

COMMISSIONER: So that 2001 shouldn't be there, is that right?

MR BENSON: Yes.

COMMISSIONER: Thank you.

10 MR BENSON: In fact the - no, I won't go any further. Thank you, commissioner.

COMMISSIONER: Thank you, Mr Benson. Mr Flanagan?

15 MR FLANAGAN: Thank you, commissioner. Commissioner, the AWU fully supports and endorses the variation of both of the awards in the amended terms sought by Mr Benson. In our submission, the application is consistent with the Wage Fixing Principles, in particular expense-based allowances. If I can take the commission to the schedule tendered by Mr Benson in relation to T9396, Appendix A, and in particular to about five pages in on that schedule where it's headed up, Expense Related Allowance Schedule 2000 -

20 COMMISSIONER: Yes.

25 MR FLANAGAN: - you will see that in each of the tables the CFMEU have identified the appropriate ABS category which applies to each of the particular areas concerned, they've identified the old rate, they've identified the percentage change which they've termed the calculation, and they've identified the new rate. Now that, in our submission, is consistent with this commission's approach to varying expense-based allowances.

30 You will also see in that schedule tendered by Mr Benson at the end of that at the last few pages, that the CFMEU have in fact provided this commission with a copy of the consent orders of the federal commission, in this instance in relation to the national building and construction industry for each of those movements which have occurred since 1998. So that in fact all that this application seeks to do is to maintain the parity which was in place in 1998 between the
35 state awards and the federal award.

So, in our submission, commissioner, the application is consistent with the Wage Fixing Principles, consistent with the approach adopted by this commission in varying expense-related allowances, and in those circumstances does not offend the public interest and the

application ought to be granted in both matters. If it pleases the commission.

COMMISSIONER: Thank you, Mr Flanagan. Mr Rollins?

5 MR ROLLINS: The TCCI have analysed the increases to the expense allowances and were provided with full documentation to be able to do that. We are satisfied that they are all in order and I broadly concur with the remarks that they do not offend the public interest. We therefore consent to the variation of this award.

10 COMMISSIONER: Thank you, Mr Rollins. I am satisfied that the applications are consistent with the wage fixation principles and certainly there is no offence to the public interest. As a consequence the applications will be granted with an operative date to commence on or after the first pay period occurring on or after today.

15 On the errors and omissions accepted, the order will be settled between the applicant, the TCCI and my associate and on that basis the commission stands adjourned. Thank you.

HEARING ADJOURNED 10.56am