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TRANSCRIPT OF PROCEEDINGS

O/N 1131

TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT P.C. SHELLEY

T No 11620 of 2004
T No 11621 of 2004
T No 11622 of 2004
T No 11623 of 2004

FARMING AND FRUITGROWING AWARD

FISH AQUACULTURE AND MARINE PRODUCTS AWARD

PLANT NURSERIES AWARD

SHELLFISH INDUSTRY AWARD

**Applications pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Australian Workers Union to vary the above
award re superannuation**

HOBART

9.30 AM, MONDAY, 6 SEPTEMBER 2004

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

HEARING COMMENCED

[9.55am]

PN1

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

PN2

MR M. WATSON: I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

PN3

MR K.J. RICE: I appear on behalf of the Tasmanian Farmers and Graziers Employers Association. Deputy President, that is in respect of the Farming and Fruitgrowing Award.

PN4

THE DEPUTY PRESIDENT: Yes. And there is no objection to all the matters being joined?

PN5

MR FLANAGAN: No, Deputy President.

PN6

MR WATSON: No.

PN7

MR RICE: No.

PN8

THE DEPUTY PRESIDENT: Okay. Mr Flanagan?

PN9

MR FLANAGAN: Thank you, Deputy President. Deputy President, these applications are designed to address two issues. We have identified a situation in some of our awards where they continue to refer to a superannuation contribution of three per cent, despite the fact that the Federal government requirement is nine per cent. So, in part, the applications seek to do that. The other issue that the applications seek to deal with is a difficulty which we have identified in respect to itinerant rural labourers, if I can use that term in a broad sense.

PN10

What we have found is that itinerant labourers moving from one section of primary industry to another section which they do on a regular and routine basis, are being currently required to change superannuation funds depending on which industry they are working in. So for the itinerant labourer it has become a real issue where they will work for a period of time, for example in the silviculture industry, and they will be eligible in that circumstance to be members of Australian Primary Superannuation. They leave - as a member they leave employment in the silviculture area which then they go to the hops to work but they are unable to continue in the fund.

PN11

The same thing is occurring in terms of the aquaculture area where people are working as seasonal casuals and/or casuals during the peak period in aquaculture. They then move into the farming and fruitgrowing, particularly fruit picking and packing, and again there are issues about changing superannuation fund. So what is occurring in a number of cases is we have employees with multiple funds receiving modest superannuation contributions which are then being eroded by the administration costs of the various funds. So, these applications are seeking to provide the itinerant rural labourer with the capacity to move from one sector of the primary industries to another sector without the need for them to continually change funds.

PN12

As a matter of fact, the predominant superannuation fund in the primary industries is Australian Primary Superannuation. Now, in terms of the T11620 which is the application to vary the Farming and Fruitgrowing Award, that award currently refers to the Australian Farm Superannuation Plan which was the name of Australian Primary prior to recent changes, as I understand it, to their name. So, in terms of real and actual effect, the application in T11620 really is administrative in nature in the sense of it is simply a change of name. In relation to T11621 of 2004, the effect of the application, as I indicated at the outset, is to change the reference which is currently there to three per cent to nine per cent and secondly, to insert the Australian Primary Superannuation Fund.

PN13

THE DEPUTY PRESIDENT: So that was not in there previously?

PN14

MR FLANAGAN: No, it wasn't previously in there.

PN15

THE DEPUTY PRESIDENT: Okay.

PN16

MR FLANAGAN: But it has - well, for the reasons I have identified, it is an issue for people, particularly the Huon Valley, where aquaculture and fruitgrowing, picking and packing sit side by side and have different peak periods so they move between the two. In relation to T11622, the application to vary the Plant Nurseries Award, again it deals with two issues. Firstly, it inserts nine per cent instead of three per cent and secondly, it inserts Australian Primary and then in relation to T11623, the application in respect to the Shellfish Industry Award, again it increases the reference three per cent to nine per cent and it inserts Australian Primary.

PN17

Other than those specific changes, the provisions remain in the current form, at least they should and I believe they do. So, having regard for the fact that there is no cost impact by the changes proposed, that in fact the effects of the applications to update the award in terms of the reference from three per cent to nine per cent and having regard to the particular circumstances of the itinerant labourers covered by these awards, we would submit to the Commission firstly

that it does not offend wage fixing principles. In fact, it is consistent with those principles insofar as we are ensuring that the award continues to reflect contemporary standards in relation to superannuation and secondly, that it does not offend the public interest.

PN18

In fact, it is consistent with the public interest to the extent that it is unreasonable and unfair that itinerant labourers are exposed to a multiplicity of occupational superannuation funds and unless they actually take specific steps to roll form one fund into another, then the real value of the superannuation contributions are being eroded by the administrative charges. So for those labourers they will now simply be able to be in one fund without the multiplicity issue.

PN19

THE DEPUTY PRESIDENT: So Tasplan generally has not been used because that is common to all the awards?

PN20

MR FLANAGAN: It is common, but it is not the predominant fund in the primary sector in the rural industries. The predominant fund was Australian Farm; it is now called Australian Primary.

PN21

THE DEPUTY PRESIDENT: Okay.

PN22

MR FLANAGAN: If it pleases the Commission.

PN23

THE DEPUTY PRESIDENT: Thank you. Now, Mr Rice in relation to the Farming and Fruitgrowing Award?

PN24

MR RICE: Thank you, Deputy President. Deputy President, we haven't a lot to say on this matter other than that we do support, fully support, the comments of Mr Flanagan from the AWU on all matters in this regard because it has been a problem for some time, the itinerant workforce in the Huon as well as up in the northern parts of the State. They can be covered by a multiplicity of awards, a Federal fruit, a Federal pastoral, the State Farming and Fruitgrowing Award, the Shellfish Award, and they have different references to superannuation in those particular awards, the predominant one being Australian Primary Award or Australian Primary Super.

PN25

So this does enable those people to carry their super with them and it has been - not that it is my position to be able to speak on behalf of Australian Primary and I don't purport to do so here, but we have put a lot of work in with them on their reporting procedures, on their charges and everything for itinerant workers, so they are able to track their super so their paperwork is reduced to a minimum both from the employees and from the employers perspective. I must admit it has taken a good many years from about 1986 to get this refined

to a stage now where it is a straightforward, easy to follow system, and relates particularly to itinerant workers. If it please the Commission.

PN26

THE DEPUTY PRESIDENT: Thank you. Mr Watson?

PN27

MR WATSON: Thank you, Deputy President. We have had discussions with the AWU and advise that we do not have any problem with the application. Just a matter of clarification. Under section 35(1)B and this is something that I have just sort of stumbled across as we have come here this morning, which is certain matters to be dealt with by a Full Bench. Given that it is five awards, how do we - I am not proposing that this not go ahead but - - -

PN28

THE DEPUTY PRESIDENT: Is it not more than five?

PN29

MR FLANAGAN: If I can clarify that. No, there are four applications currently before the Commission. There was another application in respect of another award but when we examined the award we found that the application was unnecessary so we have withdrawn it. I am sorry, - - -

PN30

MR WATSON: Okay, that is fine.

PN31

THE DEPUTY PRESIDENT: Okay.

PN32

MR WATSON: Look, I will withdraw that, Deputy President.

PN33

THE DEPUTY PRESIDENT: Yes, I think I counted because - - -

PN34

MR WATSON: Yes, I had T11621 through to and including T11624. I am sorry - 620 to 624 which might - - -

PN35

MR FLANAGAN: Yes, 624 was withdrawn.

PN36

THE DEPUTY PRESIDENT: Yes, we do not have 624.

PN37

MR WATSON: Right, okay, that is fine. Forget about all that. So, on that basis, Deputy President, we advise that we are in agreeance with the application. Just one matter of clarification. In the exemption clauses, if we go to 11621 in subclause (a)(iii). That is the clause where it talks about exemptions. Now, I am not too sure, I think that might be a mistake in the order - where it says there nine per cent, because it talks about contributing from 15 November 1991. I think what might have happened is that you probably replaced nine wherever three appeared.

PN38

MR FLANAGAN: Correct.

PN39

MR WATSON: And I think that probably needs to stay at three, and it is the same in a couple of the others. Apologies, Deputy President, I did not pick that up when Mr Flanagan issued, gave us a copy of the orders because I only went to the actual - the clause that was being varied but I do not think that needs - I think that is a mistake to put that at nine per cent because I do not reckon there would have been many employees paying nine per cent in 1991.

PN40

THE DEPUTY PRESIDENT: No. So everybody agrees that we just amend that to three per cent?

PN41

MR FLANAGAN: No, not entirely, Deputy President.

PN42

THE DEPUTY PRESIDENT: Okay.

PN43

MR FLANAGAN: I think it needs to be redrafted and reflect the changes from time to time in the Federal Government's obligations. I am mindful here of the situation we have had with another employer, a very large employer, who once attempted to argue that because they were paying three per cent in 1991 and because of other circumstances they were exempt from the changes in the contribution levels from time to time. So, perhaps what we can do is if we can provide you with a redrafted clause, what I would propose is that it would say words to the effect but I am happy to discuss it further with mr Watson - in terms of - - -

PN44

THE DEPUTY PRESIDENT: Is that the only one that has that problem or do they all have it?

PN45

MR WATSON: No, there are two or three, Deputy President. Perhaps if I could suggest another course of action? Maybe if these orders could be put through with the current award clause and the exemptions clause staying as it is, and then if Mr Flanagan wants to put something to us in relation or change to that, well then that can be a separate process.

PN46

THE DEPUTY PRESIDENT: When you say staying as it is, staying as per the new drafts?

PN47

MR WATSON: As per the current award provision.

PN48

MR FLANAGAN: In other words, the nine per cent continues to reflect the three per cent but that we are free to have further discussion and make subsequent applications - - -

PN49

MR WATSON: On the exemption clause, yes, because what that will do then is put through the application for the Australian Primary Super and the nine per cent for contributions which we are fine with, but in terms of exemptions - - -

PN50

THE DEPUTY PRESIDENT: Yes, but the exemptions change back to three per cent?

PN51

MR WATSON: It stays as the award is at the moment and then if there is any change we can come to you with a separate application - - -

PN52

THE DEPUTY PRESIDENT: So we have to amend these draft orders then?

PN53

MR WATSON: Well, you would only change nine to three, that is all.

PN54

THE DEPUTY PRESIDENT: Yes.

PN55

MR FLANAGAN: I am comfortable with that approach. I should foreshadow that we will have discussions with the Chamber and TFGA about that issue because we do want to get that correct.

PN56

THE DEPUTY PRESIDENT: Okay. So that we are certain what we are doing is in the exemptions clauses, we are changing any reference to nine per cent back to that which it is in the current awards?

PN57

MR FLANAGAN: That is correct, that is correct.

PN58

MR WATSON: That is correct, yes.

PN59

THE DEPUTY PRESIDENT: Okay.

PN60

MR WATSON: So on that basis, Deputy President, as I said we agree to the applications. We do not believe they offend the public interest nor the way it is fixed in principle. If it pleases.

PN61

THE DEPUTY PRESIDENT: Thank you. Well, I indicate that the awards will be varied in the manner sought with an operative date of the first full pay period on or after today's date subject to those amendments being made to the

exemptions clauses so that they will read the same as the current awards. The matter is adjourned.

ADJOURNED INDEFINITELY