

COMMISSIONER IMLACH: I'll take appearances.

MR J. GLISSON: If the commission pleases, JOHN GLISSON, appearing for the Australian Workers Union, Tasmanian Branch, thanks.

COMMISSIONER IMLACH: Thanks, Mr Glisson.

5 **MR K. BECKER:** If the commission pleases, BECKER, K. I appear in these proceedings on behalf of the CEPU.

COMMISSIONER IMLACH: Thanks, Mr Becker.

10 **MR T.J. EDWARDS:** If it please the commission, EDWARDS, T.J. I appear for the Tasmanian Chamber of Commerce and Industry and Goliath Portland Cement Company Limited.

COMMISSIONER IMLACH: Thanks, Mr Edwards. Mr Glisson.

MR GLISSON: Thank you, sir. If I may address 6627 first which is the clause 6 variation. This is an application simply to correct an oversight, as I see it, it was made when the original award was converted to an enterprise award. Clause 6 - Parties Bound, currently refers to in 6(a) all employers, whether members of the registered - of a registered organisation or not, who are engaged in the industry specified in clause 2 - Scope. Clause 2 - Scope is as follows: This award is established in respect to all employees employed at the enterprise of Goliath Portland Cement Company Limited who are engaged in or incidental to the manufacture, storage and distribution of cement.

Clearly there is a variance between the two which needs to be addressed and corrected, and what I'm seeking to do by way of this application, is to replace in clause 6(a), that that I just read - all employers who are engaged in the industry specified - with in fact the only employer that should be represented, by putting their name, which would then be that clause 6(a) would read Goliath Portland Cement Company Limited. And that would be the variation that I'm seeking. I've got a draft of that which - this matter has been discussed between the parties, sir. It was raised at the last consultative committee meeting on site and I believe there is no objection from any of the parties. In fact, I believe it's an agreed matter with the support of all concerned. That's the first I don't know if you wish to pause and confirm agreement on that before we move onto the second issue or -

COMMISSIONER IMLACH: Yes. No, I think we'll deal with this one first, Mr Glisson, thanks.

MR GLISSON: Thanks, sir.

35 COMMISSIONER IMLACH: And what - to start off with, what award are you looking at - No.3 of '96?

MR GLISSON: Yes, sir.

COMMISSIONER IMLACH: And the (b) for employees - you're not seeking to change that to have a similar sort of wording?

40 MR GLISSON: Well I hadn't. I certainly hadn't made application to that effect and I hadn't really thought whether or not that was absolutely necessary to be -

COMMISSIONER IMLACH: No, it may not be but I just - it seems to me it would be just consistent, that's all. If it's good enough for the employer, it's good enough for

the employees, Mr Glisson, that's how I look at it. I don't know that it's significant. I'm just making a point. Perhaps we'll hear what Mr Edwards says.

5 MR GLISSON: By all means, yes. If that is the wish, I would certainly have no objection to reflecting that it is employees of the employer, that being Goliath Portland Cement.

COMMISSIONER IMLACH: Yes. All right. Mr Becker.

MR BECKER: I'll reserve my judgment but I support the application in its principle.

COMMISSIONER IMLACH: Yes, thanks, Mr Becker. Mr Edwards.

10 MR EDWARDS: Thank you, commissioner. As Mr Glisson has indicated, commissioner, this matter does come before the commission on a consent basis. We, like Mr Glisson, believe that the terminology used in clause 6(a) was in fact an oversight at the time the Cement Makers Award was converted to an enterprise award known as the Goliath Cement Enterprise Award.

15 Obviously the parties to an enterprise award would have to include the enterprise. The form of terminology in 6(a) doesn't accurately reflect that and to that extent the draft order tendered by Mr Glisson accurately, in our view, makes the change that would be required to make it accurately describe the employer party to an enterprise award.

20 In respect to the matter raised by yourself, commissioner, it wasn't something that had occurred to me but I think that you are quite right, and if Mr Glisson were prepared to seek to amend his application to properly enshrine a form of words that would describe the employee as being all those employees engaged at the enterprise of the Goliath Portland Cement Company Limited of Railton Tasmania - or perhaps
25 not limit it to Railton, because there are couple of locations that are slightly off site. But if Mr Glisson were to seek to amend his application in that way, that amendment would receive our support, as would the variation to the award flowing from it should you be minded to grant it.

30 Having said all of that, we believe the application is in accordance with the public interest and does no harm to the Wage Fixing Principles of the commission and as consequent we offer our support and that of the company to it. If it please the commission.

COMMISSIONER IMLACH: Mr Glisson.

35 MR GLISSON: Sir, I have no objection at all to putting a further - well - amending the application to include an amendment to (b) also to reflect that it does only refer to employees of Goliath Portland Cement Company.

COMMISSIONER IMLACH: Yes, all right. Well sorry to be imposing this on you, Mr Glisson, but are you requesting that the - your application be so amended?

MR GLISSON: Yes, sir.

40 COMMISSIONER IMLACH: Yes, all right. Thank you. And having done that I'd ask you, if you wouldn't mind, to - when we've completed the formalities, just write on my draft order the amendment.

MR GLISSON: Yes, sir. Well I'll supply a fresh typed draft.

COMMISSIONER IMLACH: Yes, well make sure Mr Edwards sees it -

MR GLISSON: Certainly will.

COMMISSIONER IMLACH: - and then we'll all be happy. Thanks, Mr Glisson.

MR GLISSON: Thanks, sir.

5 COMMISSIONER IMLACH: Nothing else? What about you, Mr Becker?

MR BECKER: I support that, sir.

COMMISSIONER IMLACH: Good. Thank you, gentlemen. I indicate now, this application in relation to matter T.6627 of 1996 will be granted operative from today's date.

10 MR GLISSON: Thank you, sir.

HEARING CONCLUDED

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COMMISSIONER IMLACH: The next matter.

MR GLISSON: The second issue, T.6620, is in relation to the mixed functions clause and it's been a bone of contention with membership of ours for some considerable time, and in fact it's come very close to causing a number of disputes on site, one of which in fact is subject to the subject of which the commission responded - or corresponded to our organisation only this week which was a dispute in a bagging shed area, which I have to respond back to the commission about the status of that dispute.

The problem has been what we would see as misuse of the mixed functions clause; where certain individuals are trained, have the relevant skills to perform a range of duties but are only paid for those skills when they are actually performing the task associated with it. That seems to affect one or two areas only. By way of discussions, there have been discussions taking place over the last couple of days to address some of those issues. I would seek to in fact adjourn this application to allow further discussions to take place.

Should there be no agreed outcome then I believe we'll be coming back to you to seek to remove the mixed functions clause from the award, but in doing so, I think it's been pointed out quite clearly to me that there'll be a number of other changes that would need to take place within the award to ensure that it does in fact not disadvantage anybody and there is no major or significant gain made as a result simply of changing the mixed functions clause.

It is designed to - or the award should be designed to reflect that someone that's got skills and is asked to utilise those skills is paid for them because they've got the skills on all times, not just a - on an ad hoc basis, and the mixed functions clause seems to only pick it up now and again rather than the majority of the time. And I would seek to have this matter adjourned for it to allow the further discussions. Hopefully we'd be back before you before the end of January in some sort of report on the outcome of further discussions.

COMMISSIONER IMLACH: Thanks, Mr Glisson.

MR GLISSON: Thanks, sir.

COMMISSIONER IMLACH: Mr Becker.

MR BECKER: Thank you, sir. Well I support the adjournment of Mr Glisson's proposing. For the record I would like to put the CEPU's position in relation to the mixed function clause.

Prior to - prior to the variation - or prior to the making of this new award under the old industry award some two years ago - or it might have been three - into that award went the classification structures that were quite easy to put in for the metals and electrical people, and indeed we saw at that time that it was a bit of - a bit of nonsense to have a skills based career structure and then over the top of that you had a mixed function clause.

So at the time we proposed, and indeed the company agreed, that the mixed function clause should come out of that particular award. However, we recognise the problems that other employees have got and I suspect the majority of employees have had, that they never had a completed career structure such as we had.

So just for the record, we support the removal of the mixed function clause, but however if the parties, including the AWU and others reach some arrangement that it stays until some variation to it, then so be it. But that's just the view of the CEPU

and I'm not here to represent the Metal Workers Union but they were involved in the original discussions.

COMMISSIONER IMLACH: Thanks, Mr Becker. Now, Mr Edwards.

5 MR EDWARDS: Yes, commissioner, as is my wont, I disagree with much of what has fallen from the other end of the table. Christmas cheer hasn't changed that. We have very strong views about the retention of the mixed functions clause in this award as has been made known to each of the organisations that are here today as well as the commission, as currently constituted.

10 You will recall, I suspect, commissioner, that you did in fact conduct proceedings up on site in respect to the dispute in the bagging shed, in respect of just this issue, which is the use of the mixed functions clause to reward employees who are relieving in another employee's substantive position. That is, it is not part of their own substantive position but is a relief situation to cover absenteeism, RDOs, annual leave, long service leave or whatever. And that matter was debated at some
15 length before yourself and I think the views of the parties were made well known at that time.

Since that time, the company have made a - put a proposal to the AWU which is receiving their active consideration at this stage which seeks to break the impasse over the bagging shed issue and we are hopeful that upon resolution of that, that in
20 large measure this issue will either dissipate or go away, and as a result we may see this application withdrawn.

Should it not be withdrawn, and like Mr Becker the record ought to show from the company's perspective that we will oppose the removal of the mixed functions clause for all the reasons we've already advanced to the commission as currently
25 constituted. We don't agree with the basic concept that you reward employees for the skills that they possess and are required to use, but it is the skills that they are required to use in their substantive position that are rewarded on a day by day, week by week basis, and those that are required to use on an occasional basis in someone else's position are ones that we believe should be rewarded by a provision
30 such as that contained in the mixed functions clause.

I don't intend to go to a chapter and verse dissertation about the rights and wrongs of mixed functions clauses. The other thing is, I don't take issue with Mr Becker's summation of the events of a couple of years ago. Perhaps I could say on the record, somewhat flippantly I hope, that Mr Cooper, I think, from the AWU at that stage,
35 was the only party to the proceedings that objected very strenuously to the removal of the mixed functions clause. And with the benefit of hindsight, perhaps he was right. Perhaps I agree with him. But I'll leave it at perhaps just so I've got some room to move.

Having said that, commissioner, we would support the application for an
40 adjournment and we undertake to have those further discussions that Mr Glisson has referred to and we are hopeful that commonsense will prevail and that we will be able to resolve this issue without need for further intersession by the commission. However, time will tell. And we perhaps can report back to the commission at a convenient time. If it please the commission.

45 COMMISSIONER IMLACH: Thank you. Anything else, Mr Glisson?

MR GLISSON: Very little, sir. I would just reinforce the fact that it's certainly not our intention at this stage to leave the mixed functions clause in the award in the long term. We do see a need to move away from the old style and move more to a system which allows greater flexibility which we believe will only apply when people

are rewarded for having the skills and having them skills available to the employer at any time. It's then up to the employer to utilise those skills that he's paying for. But we'd certainly seek, as I indicated earlier, the adjournment of this matter to allow further discussions to continue. Thank you, sir.

5 COMMISSIONER IMLACH: Thanks, Mr Glisson. Is that your view, Mr Becker?

MR BECKER: Yes, sir.

10 COMMISSIONER IMLACH: Thanks, Mr Becker. All right, well I will agree that this matter be adjourned. Not knowing all about this matter, not knowing the close details or remembering them, seems to me that it's in the interest of both parties that they do reach a settlement because if it comes to arbitration I have a feeling one party will be very much disappointed.

This matter is adjourned until I hear from the parties. Thank you.

HEARING ADJOURNED