

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 3313 of 1991

IN THE MATTER OF an application by
the Australian Workers' Union,
Tasmania Branch for making of the
Shellfish Industry Award

COMMISSIONER WATLING

HOBART, 13 February 1992
continued from 10/12/91

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances, please.

MR G. COOPER: If the commission pleases, I appear on behalf of the Australian Workers' Union, Tasmanian Branch, COOPER G.

COMMISSIONER WATLING: Good. Thanks, Mr Cooper.

MR W. FITZGERALD: If it pleases, I appear on behalf of the Tasmanian Confederation of Industries, FITZGERALD W.J.

COMMISSIONER WATLING: Thanks, Mr Fitzgerald. On the last occasion we were together we were to examine the contents of this new award - the award being made in August of 1991.

Since that time of course organisations have sought an interest in the award, and we're now looking at the contents. Mr Cooper?

MR COOPER: Mr Commissioner. What I think would be sensible to do, commissioner, is, with respect, the last time we were here we did take you through a document I believe is titled for the record AWU.1, and we took you through that off the record.

We have since the time we were before you last met on a number of occasions, prepared a number of drafts, and I would like now to tender an exhibit that reflects an agreed position between the parties.

COMMISSIONER WATLING: Right. We'll mark this Exhibit AWU.2. Thank you. Well, do we want to work our way through it off the record just to have a look at it, and it might save us all a bit of time?

MR COOPER: I think, commissioner, I was going to suggest that to you that we do go off the record to work our way through the document.

COMMISSIONER WATLING: And then you can speak to it after we've done that exercise.

MR COOPER: I think that would be a good idea, commissioner, yes.

COMMISSIONER WATLING: Right. Mr Fitzgerald, are you happy about that?

MR FITZGERALD: I think that's a sensible way to proceed, commissioner.

COMMISSIONER WATLING: Right, we'll go off the record.

OFF THE RECORD

COMMISSIONER WATLING: Mr Cooper, thank you.

MR COOPER: Thank you, commissioner. With respect to the time we've had available to the parties, with your guidance for the time off the record we have fully discussed the award.

The draft that was tendered as AWU.2 is now slightly amended, and I believe in the course of the discussions those amendments have been picked up by the commission.

COMMISSIONER WATLING: Right. For my part, can I just indicate for the purpose of the record that we have spent a number of hours off record examining every clause contained in Exhibit AWU.2, and I am satisfied that we've worked our way through each of the clauses, and I've had it clearly explained to me the reasons behind each of the clauses contained in that exhibit. Thank you.

MR COOPER: Now, with respect to - there are a number of points I think that need clarifying further - and that is with respect to wage rates. The wage rates that are outlined in Clause 8 - Wage Rates do contain for this exercise the two 3% adjustments, or those wage increases available to the employees through the August '89 decision nationally and, further, through the subsequent state decision.

It also includes the 2.5% adjustment that is available under the state decision as outlined in the principles of August last year. The minimum rates adjustment has been completed. There are no further minimum rates required. Effectively then, this award as outlined in AWU.2 does complete the structural exercise - the structural efficiency exercise - for this industry.

If I can just briefly, commissioner, speak to the principles as outlined in Attachment A of the state wage case decision of last year. The parties to the award in making this new award have examined the non-award matters and everything else contained in the award, and this award does comply, I would submit, with Principal A in that the contract of employment is flexible, it does reflect the needs of the industry.

The arrangement of working hours are unique in that they are governed by a number of external factors that are unique to this industry. It is not a controlled environment, and I think the hours of work clause does quite clearly demonstrate that. The scope and the incidence of the award is quite clear, and as defined in Clause 2 - Scope.

The parties have implemented facilitative provisions, and which we have discussed off the record. There are facilitative provisions with respect to the hours of work in

particular which will make the industry more flexible in that the employer and the employee can agree to changes that will suit the needs of the enterprise and the employees, thus satisfying the employees as well. I would suggest that the award is consistent with that principle, and it does satisfy that principle quite sufficiently.

The award does contain a provision to establish a consultative mechanism and that is in the productivity and efficiency clause at No. 25 in the award. The award also allows for productivity discussions to occur, and it also allows - or contains a provision - for employees to be directed as is required under (e).

So, with respect to (b), (c), (d) and (e) of the principles, they are all satisfied. The parties have completed the structural efficiency exercise as determined in the October '89 wage case, and the parties to the award have completed the minimum rates adjustment as required in (g).

So I spoke briefly to those principles for the purpose of clarifying that for the record. I would like to speak further to the document, commissioner, and that is in respect to the Shellfish Industry Award.

It was, as you would well be aware, created as a result of what the parties felt was an inability to accommodate the scope of this award under the Fish, Aquaculture and Marine Products Award. The award is peculiar in the sense that the industry is governed by a number of variables that are peculiar to the industry, i.e. tides and weather conditions.

And with respect to those variables the award does contain provisions that are probably revolutionary in a sense, in that the hours of work clause does contain some quite unique provisions that allow employers and employees to work any day of the week if they so agree, within a span of hours that goes from 5 o'clock in the morning to 8 o'clock in the evening, and that is because the industry does require that type of flexibility to be able to maintain and, in fact, compete at an international level.

The other provisions in the award are quite - some are - quite standard with respect to sick leave and payment of wages, etc., but I just wanted to clarify for the record the uniqueness of clause 17 - Hours and days of work, and I understand we have a commitment from the TCI which they may be able to elaborate on, that they do not intend to use provisions in this award because of their uniqueness in the making of any other award.

With respect to that submission, commissioner, I would just ask that in the draft contained AWU.2 there is a date of operation, and that is the first full pay period to commence

on or after the 13th of February 1992, and having completely investigated the award with you off the record, I would ask that the commission support our application in the making of this award, and grant the application as sought, effective from the first full pay period on or after today's date. If the commission pleases.

COMMISSIONER WATLING: Good. Thank you. Mr Fitzgerald?

MR FITZGERALD: Thank you, commissioner, I'll be very brief in my comments in response. Firstly, I'd generally endorse the comments and submissions made by Mr Cooper.

As you are aware, the second document before you, AWU.2, has been presented as a consent document which we would formally indicate our consent to at this time - or AWU.2 as amended - can I say, commissioner, and I would generally endorse the submissions made by Mr Cooper in seeking the ratification of the commission. I'll make some further comments in support also.

And, can I say, commissioner, the award which has been made for this particular industry I think does indicate the particular needs this industry has.

In terms of the commission's principles I would submit as it is an award covering previously an award-free area the commission's principles are very much complied with, particularly in the making of a new award, and I make particular reference to the fact that it should reflect, prima facie, existing rates and conditions.

And, in that regard, commissioner, not only in terms of particular wage rates, but in terms of conditions, and I refer particularly to the hours of work clause which Mr Cooper has.

There is currently a range of flexible arrangements which, in my submission, have been endorsed, or have been encompassed in this award, and in that regard we would strongly submit, commissioner, that it complies fully with the commission's principles and, particularly, the making of a first award.

We would agree with Mr Cooper's comment that as this award is a consent award the TCI as an organisation is unable to utilise the very different hours of work clause in this industry for any change in respect to any other industry. But I don't think that in any way prevents the TCI seeking any changes in any other industry award based on the merits put. But, certainly, we would not seek to use this award to further argument in any other award in respect of the hours of work.

Commissioner, I would also endorse particularly the comments made by Mr Cooper in respect to the wage rates and the structural efficiency exercise. It does encompass recent

decisions of the commission in respect of the 2.5%, minimum rates adjustment, and structural efficiency increases, both the first and second round, and I would submit that has been part of the overall negotiating process, given that it is a first award.

I just pause just for one moment, commissioner, in that as we have, as you indicated, have been off record for a number of hours, we would reserve our right - and I am happy Mr Cooper commented on this - if there are any inadvertent errors or omissions as a result of the process which we have gone through this morning we would reserve our right to correct those inadvertent errors or omissions.

But, as far as we are concerned, the document before you represents as far as possible a fully consent position, and we are pleased to be able to get to that.

COMMISSIONER WATLING: Does that mean by consent?

MR FITZGERALD: I am sorry?

COMMISSIONER WATLING: Does that mean by consent?

MR FITZGERALD: The position before you today?

COMMISSIONER WATLING: No, the errors and omissions - correction by consent.

MR FITZGERALD: I think Mr Cooper may want to comment on that. There may be some inadvertent errors which may work against either party, and I think it might be wise for both parties to reserve rights in respect of that.

But that doesn't in any way - we don't in any way resile from the position, the general position of consent - as a result of that, commissioner.

COMMISSIONER WATLING: I just make the point, anyway. It is open to either party under the Act to make application to amend the award at any time.

MR FITZGERALD: Certainly; yes. Yes, what I am just saying, if there are any we'd certainly be seeking to reserve our position if there are inadvertent errors, and I don't believe there are, commissioner, but just in case.

In terms of the statutory requirements, commissioner, section 36 of the Industrial Relations Act 1984, as you would be well aware, requires the commission to satisfy itself that it is in the public interest.

The commission has generally adopted a view, I believe, that it has a duty to make awards in award-free areas. This is

clearly previously an award-free area and we believe it is in the interests both of employers and employees to formalise an award in the terms that we have put before you in Exhibit AWU.2. And, in that regard, commissioner, we believe it is in the public interest that the commission does endorse the application before you today.

The only other matter, commissioner, I think I should address is the date of operation which Mr Cooper has already indicated to the commission, and I would also endorse that date.

The TCI and its members and I think the bulk of employers in this industry and we were able, given that they have been fully informed during the various stages of negotiation and the formal proceedings before you, were able to advise very quickly of any decision which the commission may make, and we would be seeking obviously by Mr Cooper's submission a decision in principle, and with operative effect from the first pay period - full pay period - occurring on or after today, the 13th of February. So, in summary, commissioner, we are very pleased to be able to put this submission before you today.

There has, I believe, been on both sides a large element of goodwill which we certainly appreciate, and I think does reflect the needs of employers in this industry, and we are very pleased to be able to indicate that the position is put to you as a consent document. I'd seek the commission's ratification as sought. If it pleases.

COMMISSIONER WATLING: Good. I have just got one question. I am quickly doing a calculation here. Why is it in Clause 8 - Wage Rates that you have a base rate of 392.60, and a supplementary payment of \$24.60 at the base tradesman's level?

MR FITZGERALD: I must admit I'll have to put my thinking cap on just to recall why.

COMMISSIONER WATLING: Is that - that's not in accordance with the decision, is it - because we're supposed to have \$365.20 at the base level, and \$52.00 at the supplementary payment level.

MR FITZGERALD: The supplementary payment - yes, I understand the decision in respect to that.

Initially, commissioner, we were I think just indicating that there be a total award rate, and then looking at the commission's principles it was required to be split into a base rate plus a supplementary payment.

I suppose the exercise is a little bit academic in terms of supplementary payment in that the exercise in minimum rates adjustment is not appropriate in this area, anyway.

COMMISSIONER WATLING: But you can't have a base rate more than 365.20 at the tradesman's rate.

MR FITZGERALD: Yes, that's something which I had overlooked, commissioner. I'm quite happy for that to be amended to - as long as the overall award rate - the overall outcome - is 417.20.

COMMISSIONER WATLING: Right. So, what we should do then is convert the percentages on the base rate and supplementary payment in the appropriate way to keep in line with the state wage case decision of August '89.

MR FITZGERALD: I'd be happy with that. Mr Cooper may want to make some comment in that regard as well.

COMMISSIONER WATLING: Can I just elaborate on that. The state wage case, or the national wage case, which was adopted by this commission decided that the base rate for tradespersons should be 356.30, and the supplementary payment should be \$50.70.

If you put the 2.5% on both of those, it would mean that the base rate would go up to 365.20 and the supplementary payment should be \$52.00 - that's in keeping with the decision - and that means the supplementary payment figure in each of those columns would be higher - prima facie, anyway.

But there is a need to keep them right, otherwise we get other people at the tradesperson's level saying, well we want to increase our base rate to 392.60. Now we're breaking the nexus with the tradesperson.

MR FITZGERALD: Well, I am happy for a change to be effected, commissioner. Mr Cooper may want to -

COMMISSIONER WATLING: I think I would be required to do it, anyway, to keep in line with the decision.

MR COOPER: Commissioner, before I do give my final submission, can we just go off the record for a moment, please?

COMMISSIONER WATLING: Yes, for sure.

OFF THE RECORD

COMMISSIONER WATLING: Thank you, Mr Cooper.

MR COOPER: Thanks, commissioner. With respect to the points you raised, and point 8 firstly, we'll accept what the commission is saying with respect to the principles.

We'd want the wage rates to reflect the principles, and to be consistent with those principles in the matter of wage rates and supplementary payments.

COMMISSIONER WATLING: Right. Well, we note the award rate that you have got in clause 8 is right. We'll make sure in any order that's issued that the appropriate percentages are based on the base rate and the supplementary payments.

MR COOPER: Good. Fine. With respect to the matters that Mr Fitzgerald raised, I omitted the fact that this award, we would suggest, doesn't - does, in fact, - is consistent with the public interest. It doesn't actually harm anything, it does merely reflect the flexible work arrangements that are occurring in industry with respect to hours and also rates of pay.

Reserving the right - I can understand the TCI saying that - because I've been involved with this award for 3 months and I think in that time we've produced 15 drafts and five of those having come in the last couple of weeks. So there has been a bit of a rush on with producing documents. But that's all in an attempt to get the matter finalised.

However, we would rather come back to the commission through an application to vary, if there was something wrong in the award.

COMMISSIONER WATLING: Oh, well, I would have to say to both parties that once they have concluded this matter today it is concluded. Anything that happens from here on in it would have to be by application, anyway.

MR COOPER: That's correct. That's right. And what we're saying, I suppose in effect is, that we fully support the document that we have submitted to you - bugs and all, if there are any in it. Your scrutiny will certainly iron out any problems that you may find in it.

In closing then, I would further then submit the document to you to be ratified. We would appreciate some direction or opinion from you today as to your intentions with respect to this matter, and again endorse the operative date. If the commission pleases.

COMMISSIONER WATLING: Right. Well, can I say to you that you have put a lot of work into this and I appreciate how much time does go into it and, certainly as far as I am concerned, I think it straightens out things for the industry.

It's got - this document in AWU.2 - certainly is produced for this industry, it is handcrafted for this industry, and it contains a lot of things that are probably not contained in other awards; and I suppose from both sides it shows some initiative to look at tailoring an award for an industry that does have some peculiarities.

I will hand down a written decision in due course, but I indicate to you now that the decision will be in favour of the application, and the operative date will be from the first full pay period to commence on or after today.

The decision I hand down in due course will also contain the order giving effect to the decision, and it will be prima facie in line with Exhibit AWU.2, as amended, during the course of private discussions.

That leads me to say that this application is now closed, and it certainly will finalise any structural efficiency matters, and from here on in if there are any amendments to be made then it will be done by a separate application. Thank you for your participation. This matter is now closed.

HEARING CONCLUDED