



TASMANIA

*Tasmanian Industrial Commission*

Industrial Relations Act 1984

T No. 10058 of 2002

**IN THE MATTER OF** an application by the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union for an interpretation of the Pasmenco Rosebery (Mining) Award

Re: Clause 2 - Scope

PRESIDENT LEARY

HOBART, 17 April 2002

**TRANSCRIPT OF PROCEEDINGS**

**UNEDITED**

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

**HEARING COMMENCED 9.40am**

PRESIDENT: Could I take appearances, please.

**MR G. COOPER:** If the commission pleases, I appear on behalf of the AMWU, COOPER, G.

5 PRESIDENT: Thank you.

**MR K. BECKER:** BECKER, K., I seek to intervene in these proceedings, on behalf of the CEPU.

PRESIDENT: Thank you.

10 **MR R. FLANAGAN:** If it pleases the commission, FLANAGAN, R., for the Australian Workers Union, Tasmania Branch seeking leave to intervene.

PRESIDENT: Thank you.

**MR W.J. FITZGERALD:** President, I appear on behalf of Australian Mines & Metals Association Incorporated, FITZGERALD, W.J., and I've got no –

PRESIDENT: No objection to the intervention?

15 MR FITZGERALD: No.

PRESIDENT: Leave is granted to all interveners. Mr Cooper?

20 MR COOPER: President, if I may, we've just had a preliminary discussion prior to you entering the chamber and that preliminary discussion with Mr FitzGerald was one that I think we should explore, on the basis that it would appear there may be an argument to mount against my application to the extent that I may have named the wrong award in the application and I should have – Pasminco Rosebery (Mining) Award, via Metalliferous Mining and Processing Award.

25 I'd seek – I know it's question without notice, president, but I would seek an opportunity to explore that. It would be silly on my part, I think, to take a lot of your time here today to have the application dismissed on the basis that there is perhaps an unwitting error committed on my part and I would like to explore that if I may, president.

30 PRESIDENT: So, do you want to explore that off the record with Mr FitzGerald?

MR COOPER: If I could, please, president.

PRESIDENT: I could be relieved for a few moments until you work out what you want to do.

MR COOPER: It is a fairly important application.

35 PRESIDENT: I understand that.

MR COOPER: And I don't want to make it sound trite. I would like to explore this because if I have made an error, it's not something that can't be fixed but it may be that I have to come back on another day and fix it, so I would like to explore that with Mr FitzGerald.

40 PRESIDENT: All right. Well, perhaps if we adjourn to allow you to do that. What's your position?

MR FITZGERALD: Could I just respond briefly and agree, but I think we probably should adjourn with you presiding, president. I think that would be useful. I'm happy to explore it in conference but I think, to dismiss it as an  
45 unwitting error, as Mr Cooper describes it is very trite. It's not that. It's a very significant case this and to say that he's made an error, on which award, is very trite. I make that comment for the record.

PRESIDENT: Is the uncertainty whether the application is for interpretation of the correct award? Is that what it comes down to?

50 MR FITZGERALD: That was going to be my point and I just wanted to have that cleared up. Certainly, we're prepared to have the application heard in respect of the Pasmenco Award.

PRESIDENT: Perhaps if you adjourn into conference, I think it's appropriate that you confer amongst yourselves first. If it can't be resolved at that level and  
55 you want some assistance, remembering of course that I'm the only one within the tribunal who can interpret it, so I don't want to compromise my role in that respect.

MR COOPER: I appreciate that, president, and we appreciate the opportunity to have a short adjournment and if we do that, we may very well be able to  
60 come back with a resolved position or a fresh application.

PRESIDENT: Okay. That's fine. On that basis we'll adjourn and the parties can confer and advise me of the outcome. Thank you.

**INTO CONFERENCE 9.45am**

**HEARING RESUMED 10.20am**

65 PRESIDENT: Thank you. Mr Cooper?

MR COOPER: President, thank you for that adjournment. What that's allowed my union to consider in that regard is that the application for interpretation would probably need to be coupled with a further application with respect to the Metalliferous Mining and Processing Award and I thank Mr

70 FitzGerald for alerting me to that prior to the hearing and for the commission  
for allowing an adjournment -

PRESIDENT: So do I.

MR COOPER: - in that regard. In discussing that briefly off the record in  
private conference between the parties without the commission involved, it's  
75 become clear to me that there is a further consideration that would need to be  
made by my union in regard to an application for interpretation of the  
Metalliferous Mining and Processing Award.

Mr FitzGerald has agreed in conference for the union to amend its application  
to include that award but I think it would be cleaner if the union wants to make  
80 a fresh application and that would also give the union an opportunity to  
consider the arguments that could be made against that application in regard to  
that award specifically.

PRESIDENT: It opens up another area, basically, doesn't it?

MR COOPER: It does open up another consideration, president, and with  
85 respect to that award what I have brought today is simply a history of that  
award in terms of the variations that have been effected to it but I haven't given  
consideration to the files that attach to those variations and there would be  
significant comments in those files that may allow Australian Mines & Metals  
to put an argument that I'm not prepared for. In that regard, what I will be  
90 seeking today is an adjournment of the application that's before you and I  
advise, foreshadow, that a fresh application will be coming in with respect to  
the Metalliferous, Mining and Processing Award and a request will be coming  
with that application for the joining of that application with the one that's  
before you now.

95 PRESIDENT: That they be heard together?

MR COOPER: That they be heard together, president. On the basis of that, I  
again, on the record, state my appreciation to Mr FitzGerald for alerting me to  
that fact prior to the commission proceeding formally and request that an  
adjournment be given on the grounds that I've submitted. If the commission  
100 pleases.

PRESIDENT: It seems to me to make sense – the interpretation of any award  
is the last gasp, if I can use that expression, as to a resolution of an issue in  
dispute and I think that it needs to be done properly and that the applications  
need to be correctly filed so that there can be no disagreement at the end of the  
105 day that we haven't followed the right procedures and I appreciate Mr  
FitzGerald raising that. You don't have any difficulty with the process  
suggested?

MR FITZGERALD: No. I can understand – and there's probably not much  
point in me objecting to the matter proceeding. Obviously, if it's an incorrect

110 application – I don't accept that it's an unwitting error, as I indicated, but if it is  
an incorrect application, then it's difficult to proceed on that.

PRESIDENT: Well, it appears to be, it's agreed between you, there's a need  
for a further application.

115 MR FITZGERALD: I would state on record, I would be happy for the  
application to be amended to read the Mining and Mineral Processing Award,  
but I think Mr Cooper's saying he would want to go further than that and lodge  
a fresh application.

120 PRESIDENT: I tend to agree. I know how pedantic we are in this place about  
paperwork and it's not necessarily the way I normally operate but when it  
comes to award interpretations, I think we have to be absolutely scrupulous the  
way we do it and make sure the paperwork is correct.

MR FITZGERALD: I appreciate your view, president.

125 PRESIDENT: Yes, because it has serious repercussions for the parties  
involved. I indicated a date to relist. Does that suit both parties? If not, I'll just  
leave it at that and we'll go off the record. I'll adjourn the proceedings subject  
to Mr Cooper filing a further application at which time that further application  
will be listed with the one that was listed today to be heard together and we can  
have a look at a date off the record. On that basis I'll adjourn these proceedings  
to a time and a date to be fixed. Thank you.

130 **HEARING ADJOURNED 10.25am**