

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2692 of 1990

IN THE MATTER OF an application
by Pasminco Metals-EZ to vary the
Electrolytic Zinc Award

re structural efficiency
principle

COMMISSIONER GOZZI

HOBART, 23 March 1992
continued from 25/9/91

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Could I have changes in appearances please.

MRS E. SMYTH: SMYTH E. for the Federation of Industrial, Manufacturing and Engineering Employees, replacing just for today, Mr Jeff Long.

COMMISSIONER GOZZI: Yes, thank you, Mrs Smyth. Well this matter was adjourned, I think, on 13 January to enable the parties to have some further discussions about the matter. Can I be informed as to where you are at now? Mr Jefferies?

MR JEFFERIES: Thank you, Mr Commissioner. It's unfortunate, in a sense, Mr Commissioner, that we haven't had any further, sort of, lengthy discussions over the issues contained in structural efficiencies. There's been one or two short meetings but there hasn't been any lengthy discussion with processing the matter any further and we were going to ask, if it was possible, to get an adjournment in this regard.

There have been a number of other matters since January this year that have been taking up quite a considerable amount of the parties' times and we've just got a new resource on deck and so we would be available - we're going to spend some more time in the near future just processing this whole matter.

COMMISSIONER GOZZI: Yes, all right, thank you, Mr Jefferies. Mr Becker and Mrs Smyth?

MR BECKER: Thank you, Mr Commissioner. Well, indeed, whilst we support that because of other agendas, that we support the adjournment, but I think it simply ought to be put on the record from particularly the organisations I represent at any rate, which is both the Plumbers and Gasfitters Union and the Electrical Trades Union, as to why we haven't proceeded these discussions. The fact is that through the commission and through working parties and through the unions themselves we had a process and the process started, it's almost - well it must be due for its fifth birthday shortly. And the fact was we were going to progress award restructuring and whatever that brought out of it, and one of the things that came out very early was that the award itself needed to be modernised.

Now I don't see that those processes should have been abandoned - well, indeed, not so much the award restructuring but the award modernisation be abandoned because there was an agenda that was put in place, another agenda. I could understand the necessity for the other agenda to come over the top, which was simply a process, as the company are saying, to get to a manageable manning level, manageable competitive - international competitive position. We are disappointed at the fact that we could not progress the award modernisation and simply now to say that we are going to get the thing back on track because another process is somewhat seen to be

completed, well then I question that because my understanding is that the other process, and I guess we might as well put that on for the record, a process by the name of RACE, is far from completed for some organisations.

For the organisations that I represent it is not as a difficult matter as it is for some of the larger organisations. But to simply put, the whole other processes that have been in train for the last 3 to 4 years, put them virtually on the backburner then I think there's some questionability about whether we're all that keen or that keen to get the process finally put to bed. I mean, I think there will be people who will be retired before this thing ever comes to its finality. And I'm not saying that we're walking from any agreements. The fact is we understand, from our side any rate, that award restructuring is an ongoing and inevitable - will go on for some years to come. But I think that somebody ought to pull this thing up, get it back on track and we have to manage as we can manage. And I get the feeling that some people aren't as committed to the award modernisation process as they previous were maybe this time last year. If the commission pleases.

COMMISSIONER GOZZI: Thank you, Mr Becker. Mrs Smyth?

MRS SMYTH: We support the adjournment on the grounds that there have been no adequate discussions. But as you know, Mr Commissioner, we have had discussions on a series of other matters with the company and at times have had to ask for your assistance. So there have been a lot of discussions but not on the point. Thank you.

COMMISSIONER GOZZI: Yes, thank you, Mrs Smyth. Mr Clifford?

MR CLIFFORD: Yes, Mr Commissioner. The Metal Workers have also asked me to speak on their behalf today. I haven't got a covering letter but we can soon tidy that up if needs be. But we're of the same opinion as the ETU; we don't object to the adjournment but we do ask that a priority is put on the matters of award restructuring and award modernisation. I'm quite sure if I was to drag out some transcript of two hearings ago I'm pretty sure that you indicated to us that that was your intention to streamline the process to put 2792 to bed so that we could go on with other agenda items.

And that's where we view that we should be, that we would hope that you'd probably take a little bit firmer hand today and suggest a timetable that award restructuring and award modernisation should be completed so that we can get on to another pressing item that the company has on their agenda, which is RACE. That stands for Reduce All Costs at EZ. Now we're very firmly behind the company on trying to make EZ a little bit more competitive in the world market but we do see that award modernisation and award restructuring are two of

the most central points for the company to access better trained employees. And we would be hoping that we would be able to fix that up first and then go on to RACE. So we would have no objections to an adjournment to facilitate further talks.

COMMISSIONER GOZZI: Yes, thank you, Mr Clifford. Before I ask you to respond, Mr Jefferies, the subject matter of this application really goes to - or not this application; it's part of the structural efficiency application. But the topic we're dealing with as part of that process currently relates to incorporating allowances into the wage rate, into the total wage rate.

I've made some observations about that and asked the parties to address themselves to it. It seemed to me that really the issues weren't that monumental and could have been addressed in the 2-month period between now and - between January and now. The fact that hasn't happened is disappointing. But putting that to one side for the moment, that part of the process, I detect that Mr Becker and Mrs Smyth and Mr Clifford, that you are really addressing a wider range of structural efficiency issues that are not necessary comprehended in that process that I just referred to.

If that is the case I'm certainly concerned that there is a view that might be interpreted as saying that the process is stalling or has stalled and needs a kick along. From my perspective - I want to be quite frank about this - I want to close this file on the basis that the program as envisaged when we first started off is substantially in place. As far as any fine tuning is concerned of the program I would then deal with those issues by way of separate applications.

So, in summary, there are two that I'm saying. The first one is that the allowances issues ought to be able to be sorted out fairly quickly with regard to the ongoing award modernisation aspects of the exercise and the outstanding structural efficiency matters that need to be dealt with, whether they be the implementation of structural efficiencies or the classifying of employees in the new classification structure, should be dealt with against the background of a fairly reasonably tight time frame. Now if the parties are asking me to put that sort of time frame in place, then I'm prepared to go off the record and do that so that the whole thing is tightened up and we can look at it in that way.

Can I ask, firstly, Mr Becker, is that what you're looking for, is that what you're putting to me?

MR BECKER: I guess, Mr Commissioner, that has got its merits to a degree. But I think what I was simply putting to the commission was the fact that in the wider agenda - and I know that the wider agenda hasn't got a T. number. But the wider

agenda is that we all had an understanding of how this process was going to start and be dealt with. I don't think anybody is willing and has got the forthright to stand up and say where it's going to finish and how it's going to finish.

But the fact is that we had certain things - certain methodologies of getting there and the stepping stones to get to. Now simply What's happened is another agenda has come over the top.

COMMISSIONER GOZZI: The RACE agenda, you mean?

MR BECKER: The RACE agenda has come over the top which has had its problems, i.e. with the company - and I can feel for the company as well that it has taken the priority of their industrial relations people to facilitate that. But as far as the people that we represent it has come over the top as a further, if you like, kick in the pants to them and all of the good work that we thought we were doing - and I'm talking about collectively and combined - appears to have taken somewhat of a back step.

Now whether the agenda you're talking about is going to be a process that will bring it back on track, I do agree that we should have some target dates and those sorts of things. But I guess all we're making the commission aware of is that another problem out of the myriad that's arisen out there over the years is now there. I just say that as far as the two organisations that I represent, it hasn't been as a major problem as it will be for others. But however my understanding is the commission or anyone else doesn't want to deal with groups of individuals in this process rather than deal with the whole of the structure and the whole of the company.

And I have no problem but I think maybe what we might be able to do - and I don't know how Mr Jefferies sees it - is that if we probably adjourned into conference and we might be able to explore some avenues of, I believe, putting it back on track and making sure that your wishes and aspirations are dealt with, that is that the T. number that you're dealing with now, but the wider agenda is also addressed so as we can go back to the membership with a clear and concise methodology of getting towards the end because we're just getting lost.

COMMISSIONER GOZZI: All right, thanks, Mr Becker. Mrs Smyth, anything further?

MRS SMYTH: No, just - I think just going along that way would be adequate.

COMMISSIONER GOZZI: Thank you. Mr Clifford?

MR CLIFFORD: Yes, Mr Commissioner. What you've stated I haven't got a problem with. And talking about award modernisation and restructuring I see the use of those words for myself as being part of T2792, that I don't see -

COMMISSIONER GOZZI: Yes, 2692.

MR CLIFFORD: 2692, sorry. That I believe the allowances and other items that we were discussing I believe that that's come from the SEP areas and that's what we were mindful to have out of the road before we went on to RACE. And we see that the slotting in and the back pays all form part of this application to tidy up so that we can move on in the new directions. And that's where we've got most of the problems, is the employees are now saying that we don't seem to finish one exercise and another one comes on and another one and another one. What we're asking is that we can, at least, finish this one and then move on to RACE and whatever else is on the agenda.

COMMISSIONER GOZZI: Yes, all right. Yes, thanks, Mr Clifford. Mr Jefferies?

MR JEFFERIES: I suppose there is a lot there to bring up, Mr Commissioner. I wouldn't mind putting it on record that there are two consultative committees which are dealing with the restructuring policy as such, one is set up for the tradesmen and one is set up for the non-tradesmen, which has, sort of, a number of representatives from each union or in the case of the production service people, a majority of them are from FIMEE.

So there are these two committees which are working with our senior training coordinator to resolve the outstanding areas in terms of restructuring, back pay, gradings assessment et cetera. With the RACE program I suppose I would put on the record that the company is still committed to finalising award restructuring and award modernisation et cetera and it hasn't just totally washed its hands of that. The RACE program comes on as a necessity to save money and maintain our position in the international market and maintain employment for our employf.

However the RACE program won't just stop until we get restructuring and award modernisation finalised so the two things will have to run - or the problems et cetera that come from the RACE program will still have to be addressed and the two issues will run simultaneously and that would be our intention to continue with the RACE program and then form the small group that we had dealing with the award modernisation issue, reform that small group or have a meeting of that small group which is basically the officials and senior delegates on site and the company industrial relations personnel.

There needs to be a reasonable amount of research et cetera done on issues like allowances and the application of allowances et cetera so that we can turn round and attempt to roll them all up and address the issues that you raised yourself. So it would be our - it's not just a simple process, this award modernisation exercise because there is the application of allowances and the applications provisions need to be researched and see how they impact on the operation as to what the proposals are that are put up - that have been put up by each party. So we are quite prepared to sit down and come up with some sort of timetable to attempt to resolve this issue, but I suppose I just put it on transcript that the RACE program will not come to a halt until we get restructuring and award modernisation finalised. Restructuring is going along - it is moving along albeit reasonably slowly, but it is progressing and the majority of the areas have been finalised and it is just the - there is only about five areas that are outstanding, I think, at this stage, Mr Commissioner.

COMMISSIONER GOZZI: Right, thank you, Mr Jefferies. Well, at this stage, I propose to grant the adjournment and set a date for resumption. I will take up the suggestion of having some discussions with the parties off the record after that and if, as a consequence of those discussions, we need to put some more dates in place, well, we will do that. But, as I say, at this point it is my intention to put a resumption date in place for the allowances matter so that at least we can get rid of that aspect of the outstanding issues. We will go off the record.

OFF THE RECORD

COMMISSIONER GOZZI: All right, these proceedings are adjourned for resumption on Thursday the 16th of April at 9 o'clock in the morning. I would like to indicate to the parties that I will have an expectation for those issues outstanding in respect of today's hearing, that is, the question of allowances and apprentice rates to be able to have those resolved on that day and I would expect to receive a draft order reflecting the agreement of the parties in that order to be put forward for my endorsement. We will go into conference on other issues in my room now, thank you.

HEARING ADJOURNED

COMMISSIONER GOZZI: Look, we have canvassed a number of issues off the record and I appreciate the frankness of the parties in discussing their concerns. I would like to indicate that as far as the SEP matters are concerned, that I will leave it to 16 April to hear a report from the parties as

to how the specific issues that are currently before me in that matter have been progressed. And the specific issues relate to the question of allowances, how they may be incorporated or could be incorporated into the total wage rates and the question of payment to apprentices. You remember the commission was against the way that that was treated in the application where you showed an amount of money and there was some apparent difficulties with that process.

Now in between now and 16 April I also would want the parties to discuss the wider SEP issues as they relate to file T.2692 of 1990. Pasminco and the union parties would be aware that the commission had in mind that the conclusion of the SEP process would be with the making of a new award to replace the existing award. I'm still anxious to have the award modernised to that stage. Whether or not a new award is made or not is really secondary, but I am anxious that the award is modernised to the stage where the SEP file could be closed.

Now if the parties themselves can't give me a timetable on 16 April to bring that about, then it's my intention to list monitoring hearings over a reasonable time frame to bring that about. So to be quite clear in what I'm saying to you in respect of application T.2692 of 1990, I'll summarise it in this way, that you examine the issue of allowances, examine rates of pay for apprentices and you put before me on 16 April a program for concluding the wider SEP matters in the manner that I have described. If you are unable to put a program before me on the 16th, it is my intention to put monitoring hearings in date to facilitate that process.

I'd now like to turn to another issue and that relates to what might be called the RACE program. It's true that the commission has not got an application before it that relates to that particular initiative. I think it's clear from what has been said off the record that there is a concern with the processes surrounding RACE and particularly the non-involvement of union representatives in respect of determining the way that that program may best be brought about.

It's my understanding that a fair amount of work has already been done in respect of RACE and there are ongoing initiatives that need to be implemented. And I would like to indicate that from my point of view that there ought to be a facilitative process established which enables the input of the parties, the union parties that have successfully contributed to the SEP initiatives. It's clear also that there are some concerns mounting out at the work place about RACE and whilst the commission is totally supportive of initiatives which enhance productivity and efficiency, the commission is also interested to let the parties to know that it has a commitment to the consultative processes and mechanisms enshrined in the national wage fixing principles

endorsed by this commission in the state wage fixing principles.

I think it is important to reiterate that the company also has a commitment to those mechanisms because they supported the state wage fixing principles, they supported the introduction of those mechanisms, facilitative clauses, consultative mechanisms and those mechanisms and those facilitative clauses were aimed at achieving work place reform in a structured sensible way. And at this point in time, for the guidance of the parties, I think it is important to say that the commission would recommend the observance of those processes to bring about the sort of fundamental changes that RACE is intended to achieve.

From where I sit nothing has been put by any of the parties which would lead me to believe that anybody would want to frustrate the program. What the frustration simply is, is lack of ability to be able to contribute and to represent the interests of employees in that program. And, of course, if that goes to its logical conclusion, that inability to represent the broader view of employees, then, of course, there's every chance that the program itself could be derailed and it would take some effort to put it back on the rails. Before that happens, I think, the parties and particularly the employer - Pasminco in this case - should reappraise its approach, particularly against the background that there has been a cooperative approach to issues and that it's been said in discussions that there is no intention to part from those particular processes.

I just reiterate that the commission will be available or would be available to assist the parties informally with respect to RACE. However if a formal involvement is required it will be up to any of the parties to initiate the appropriate application. I stress though that my interest, the commission's interest to ensure that there is an ongoing program of work place reform, that that program is properly progressed and that the union parties to the award are properly involved.

On that basis these proceedings are adjourned until 16 April.

HEARING ADJOURNED

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2692 of 1990

IN THE MATTER OF an application by
the Pasminco Metals-EZ to vary the
Electrolytic Zinc Award

re structural efficiency
principle

COMMISSIONER GOZZI

HOBART, 16 April 1992
Continued from 23/3/92

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Are there any changes in appearances this morning?

MR G. ADAMS: If the commission pleases, ADAMS, G.D. I appear on behalf of the Metals and Engineering Workers Union.

COMMISSIONER GOZZI: Thank you, Mr Adams.

MR J. LONG: My understanding, sir, is that ERIS SMYTH appeared for us last time, so JEFF LONG appearing on behalf of FIMEE.

COMMISSIONER GOZZI: Yes, she did. Yes. Thank you, Mr Long.

MR K. BECKER: Commissioner, this is not a change of appearances, but I have got to leave these proceedings at 10 am and Mr Kasnia from the plant will represent the ETU.

COMMISSIONER GOZZI: Yes. Thank you, Mr Becker. Hopefully, we'll be finished by 10. All right. As you're aware this matter was last before me on the - well I think it was the 23rd - yes, the 23rd of March, following which I issued a statement and that outlined what I anticipated should happen between the time of that hearing and today. Could somebody lead off in that regard? Mr Jefferies?

MR JEFFERIES: Thank you, Mr Commissioner. The parties have met again since that time and addressed the two - not only those two issues you raised as being the apprentice rates and the allowances, but a number of other issues as well. I have an exhibit here in the form of a draft order which was discussed between the unions and the company and I'd just like to table that and I can take the commission through that.

COMMISSIONER GOZZI: Right. I think we'll mark that Pasminco 2, as far as I can tell. Yes.

MR JEFFERIES: There was - with the discussions that took place on Wednesday, there was a number of - the majority of the draft order was agreed to, however, the parties are still unable to agree in terms of the skill-based allowance - the of either points or dollars for those issues there, so what I would like to do is just go through the draft order and cover those areas which are agreed and then we can just raise the issue of skill-based allowances, et cetera.

COMMISSIONER GOZZI: Right.

MR JEFFERIES: So on the covering page of that, the arrangement clause, that's really just a change there. It's the deletion of clause 31 which was tools, electrical trade - something along the lines of no person carrying anything over 1.8 metres or something along those lines and that has been agreed - it's just a tidying up exercise - just deleting that.

COMMISSIONER GOZZI: Right.

MR JEFFERIES: So that was just a mechanism in the arrangement clause - just to note that. Clause 7 of the definitions - if I could leave those for the time being and progress on.

COMMISSIONER GOZZI: Right.

MR JEFFERIES: We turn to page 2 of that, we're talking about the wage rates. As you can see, what we've done here is we've taken the two classifications being tradesperson and production service person and put a base rate, a supplementary payment, to get a total amount of per week of 38 hours as suggested by the commission. That supplementary payment -

COMMISSIONER GOZZI: So what - sorry, I wasn't concentrating for a moment. I was looking at the award rate. What did you say about that?

MR JEFFERIES: What we've done here is we've taken the base award rate of - if we look at Grade 1 tradespersons, \$409.90, and we've added a supplementary payment being the disability, flexibility and Risdon trades and special allowance.

COMMISSIONER GOZZI: Yes. Just let me get that again. Is that disability - it's the disability allowance.

MR JEFFERIES: Yes, the flexibility allowance -

COMMISSIONER GOZZI: Flexibility -

MR JEFFERIES: - and the Risdon trades and special allowance.

COMMISSIONER GOZZI: - Risdon trades and special allowance. Now what are the amounts for each of those?

MR JEFFERIES: There's \$19.20 for the disability allowance; \$12.10 for the flexibility allowance; and \$6.50, I think, for the Risdon trades and special.

COMMISSIONER GOZZI: So all that adds up to \$37.80?

MR JEFFERIES: Yes, sir.

COMMISSIONER GOZZI: Okay.

MR JEFFERIES: And then - so just the base supplementary amount and giving you a total amount per week of 38 hours.

COMMISSIONER GOZZI: Right.

MR JEFFERIES: Then underneath in production service persons, a similar type of thing, except they don't receive the Risdon trades and special allowance.

COMMISSIONER GOZZI: Right.

MR JEFFERIES: There is one other allowance in there where it talks about employees classified in subdivision 1 - tradespersons which is the A grade. That has been held on to for the time being. There are a number of other allowances that are these skill-based allowances that I'd like to raise at a later stage in the hearing.

COMMISSIONER GOZZI: The only situation there is that employees classified in subdivision 1, tradespersons. You want to change subdivision 1 simply to read 'tradespersons' now, not 'trades and technical persons'?

MR JEFFERIES: Oh, I think that's - well, I that's just an oversight. I can adjust that.

COMMISSIONER GOZZI: So - okay. Well -

MR JEFFERIES: So there's no intent to take out trades/technical person. I think that's just an oversight, Mr Commissioner.

COMMISSIONER GOZZI: All right. So we'll make it trades/technical person and make the appropriate variation, trades -

MR JEFFERIES: Technical persons.

COMMISSIONER GOZZI: - slash technical person.

MR JEFFERIES: If we could -

COMMISSIONER GOZZI: Right.

MR JEFFERIES: The next page is the apprentice - the provision concerning apprentice. This is on the draft order.

COMMISSIONER GOZZI: Yes, yes, I've got that.

MR JEFFERIES: The percentage rates have remained the same. As we attempted last time to change those to a dollar amount and you indicated your preference for them to be maintained as a percentage amount, which we have done on the basis that the award should read 'Percentage of Grade 1 Base Trades Persons Rate', so if we go back to the wage rates, you've got the base of \$409.90. So all the relativities, et cetera, have been preserved. And the only other addition in there is that they receive a supplementary payment of \$30.30 which is a disability and flexibility allowance.

COMMISSIONER GOZZI: What do they get at the moment? Do they get those disabilities at the moment?

MR JEFFERIES: Yes, sir.

COMMISSIONER GOZZI: The full amount.

MR JEFFERIES: Yes, sir.

COMMISSIONER GOZZI: Right.

MR JEFFERIES: That's why we - instead of trying to rearrange the percentage they get those full allowances.

COMMISSIONER GOZZI: Okay. Fine. So there's nothing additional comprehended in there? I mean, I'd prefer if you -

MR JEFFERIES: No, sir.

COMMISSIONER GOZZI: I'm taking it that you're being up front with me on the whole thing and I don't have to look under every little comma and dot and dash in the document. I mean, if -

MR JEFFERIES: I'm sure that's not the case at all, Mr Commissioner.

COMMISSIONER GOZZI: All right.

MR JEFFERIES: The subdivision 4 is the waterside workers rates. They basically remain unchanged.

COMMISSIONER GOZZI: Okay.

MR JEFFERIES: And the rest of the clause 8 is basically unchanged.

COMMISSIONER GOZZI: Basically unchanged or unchanged?

MR JEFFERIES: Well, is unchanged.

COMMISSIONER GOZZI: Right. Okay.

MR JEFFERIES: We go to the - so then, just the rest of those pages. I just took the whole clause out to change that.

COMMISSIONER GOZZI: Yes, fine.

MR JEFFERIES: Put it in the draft order.

COMMISSIONER GOZZI: Yes.

MR JEFFERIES: The last - the last page on that exhibit, Pasminco 2, are the other changes that we're looking to implement by way of this application.

COMMISSIONER GOZZI: Right.

MR JEFFERIES: And the first one is: there's just a drafting problem in clause 12 of the award which should read - as it says there, it should read 'Clause 29 - Structural Efficiency', not 'Clause 32 - Working Week and Payment of Wages', that's just a drafting error.

COMMISSIONER GOZZI: So clause -

MR JEFFERIES: In Clause 12 - The Consultative Procedures -

COMMISSIONER GOZZI: Yes.

MR JEFFERIES: - it reads, 'Clause 32 - Working Week and Payment of Wages'.

COMMISSIONER GOZZI: Right.

MR JEFFERIES: And we wish to change that to 'Clause 29 - Structural Efficiency', just a drafting issue.

COMMISSIONER GOZZI: Fine. Yes, I'm with you. Got it.

MR JEFFERIES: Then in clause 13 of the award, which is the next star point down on that page. This is just a tidying up exercise in terms of the disputes and grievance procedure where we've made various changes, because instead of being 'Employee Relations' nowadays we're 'Human Resources'. And in addition, we don't have heads of groups. So if we look at clause 13(e)(ii), it says, 'or Engineer (or Head of Group)'. We just delete those out, because managers are just known as divisional managers nowadays. So if you read that in conjunction with the provision in award, you'll see we're just deleting out 'Engineer (or Head of Group)'.

COMMISSIONER GOZZI: 13(e). Divisional manager.

MR JEFFERIES: Yes. It should just read 'Divisional Manager' instead of 'Divisional Manager or Engineer (or Head of Group)'.

COMMISSIONER GOZZI: Right. Fine, okay.

MR JEFFERIES: And then the next changes we're talking about in clause 13 is the change from 'Employee Relations' - or the department known as 'Employee Relations' to the department now known as 'Human Resources'.

COMMISSIONER GOZZI: Fair enough.

MR JEFFERIES: Then the next provision we're seeking to insert is down at clause 19 - Hours of Work, which we've - there's been agreement to increase the spread of hours - spread of ordinary hours from 6.45 am to 6.45 pm. They just work 8 ordinary hours in between that time. And basically that's just a provision to put in there to - as it is now it reads - it just - it specifies the actual hours at this stage in that clause for day workers. And what we're seeking to do is just put that provision there, saying - as it reads:

Subject to mutual agreement between employees and their supervisor ordinary hours may commence at 5.45 a.m. but not extend beyond 5.45 p.m. at night.

And at crib -

COMMISSIONER GOZZI: Well, when else - why is 'at night' necessary? I mean, it's just 5.45 pm, isn't it?

MR JEFFERIES: Oh, yes. We can take that out.

COMMISSIONER GOZZI: Yes.

MR JEFFERIES: And then the:

Crib time and morning tea time will be taken at an agreed time to satisfy the rearranged start and finish times.

COMMISSIONER GOZZI: Okay.

MR JEFFERIES: Then there's the next provision, clause -

COMMISSIONER GOZZI: That doesn't interfere with -

MR JEFFERIES: No, we still maintain the - we still maintain the existing hours of 7.45 to 4.20 for day workers, but we have a clause sitting underneath which talks about - it talks about having -

COMMISSIONER GOZZI: Yes.

MR JEFFERIES: - subject to mutual agreement.

COMMISSIONER GOZZI: Okay. That's all right.

MR JEFFERIES: Then the next provision is in clause 21, which says for all - it - the clause actually sort of specified work done because - in between the times of 12.30 and 1.05, which is the normal - the normal lunchtime for day workers. We had to just vary the - the provisions there to say, if people are starting earlier then we didn't want any conflict within the award of saying that, you know, come 12.30 and I started at 6.00 that morning that I should take my lunch at that time.

So basically it's just a tidying up - another tidying up exercise which allows for people to take their lunch no more than 5 hours after they start.

COMMISSIONER GOZZI: Is that what it says?

MR JEFFERIES: I'll just get to the provision. The current - with the next - the next provision in the award actually sort of covers that situation, Mr Commissioner, where it says, you know: An employee shall not work for more than 5 hours without a break for a meal. But the provision directly above it which talks about: for work done by day workers during the normal crib time of 12.30 and 1.05 and thereafter until a meal break is allowed, payment shall be made at the rate of double time.

COMMISSIONER GOZZI: Irrespective of when the -

MR JEFFERIES: The employee would start. There is a - there is a rider with that, which says: The provision shall not apply where an employee has not been required to commence work before 12.30. So that would be a situation where if somebody had a 10-hour rest break or whatever.

COMMISSIONER GOZZI: Yes, but you're taking all of (j) out. The proviso comes out. This provision shall not apply comes out as well. I'm not sure whether you and the other parties intend that to be the case or not. Mr Long?

MR LONG: I was just making a suggestion, sir, we may go off the record and discuss it.

COMMISSIONER GOZZI: Fine. We'll go off the record.

OFF THE RECORD

COMMISSIONER GOZZI: Well given the discussion we've had about the amendment to existing clause 21(j), I'll attempt to summarise on the transcript what the intention is so if there is a future dispute about it at least we can go back to the transcript.

Now the current clause 21(j) provides for a normal crib time between 12.30 and 1.05. And if work is done by day workers during that time until after a meal break is allowed, the current provision provides for the payment of double time. However the current provision also contemplates that the payment of double time would not apply where an employee was not required, was not being required to commence work before 12.30 pm.

Now the intention of the new provision, which reads:

For work done by day workers during normal crib time and thereafter until a meal break is allowed, payment shall be at a rate of double time.

The intention there simply is that on any occasion that an employee is required to work during the normal crib time, irrespective of when that crib time falls, he is to be paid double time until such time that the meal is break is taken. And the previous restrictions in clause 21(j), as I've announced them, will not apply. And it's my understanding that is the intent of the parties and the commission is prepared to endorse that change. I think that might just be helpful in the event something falls out of bed in respect of this clause further down the track.

MR JEFFERIES: Thank you, Mr Commissioner. If we can just - there are only two other issues and fairly minor issues that we would just like to go through in this draft order, and that's really the deletion of clause 31 - Tools - Electrical Trades in total. That's pretty much been - it only applies to the ETU and basically been agreed that we can delete that provision out of the award, which is just an old obsolete provision. And from that - I'll say that the representatives aren't obsolete, it's just the provision is. Then following on from that the last change we're attempting to make is to just renumber clause 32 to clause 31.

COMMISSIONER GOZZI: Right.

MR JEFFERIES: This brings us to the issue of skill-based allowances. We had quite a lengthy discussion between the parties as to where we are with skill-based allowances. There are five allowances in question; I'll just note those down for the record. This being the first-aid allowance, the boiler allowance or boiler certificate allowance, the MIG welding allowance, the diesel endorsement allowance or the diesel allowance, the electronics and the riggers allowance.

COMMISSIONER GOZZI: What's in electronics?

MR JEFFERIES: And riggers.

MR ADAMS: Industrial electronics certificate.

COMMISSIONER GOZZI: Industrial electronics.

MR JEFFERIES: Sorry, industrial electronics.

COMMISSIONER GOZZI: That's a qualification?

MR JEFFERIES: Yes, Mr Commissioner.

COMMISSIONER GOZZI: And the riggers, right.

MR JEFFERIES: During those discussions the company sort of maintained that it was our position that these were skill-based allowances and that if they got points or they had points awarded in the relevant order for those skills, then they shouldn't be included in the award. And we were unable to agree, Mr Commissioner, as to whether we would delete all those off and we would still have further discussions about those as to whether they are - you know, the unions have got a position that some aren't particular skill-based allowances and, you know, we're saying that they are.

So we would sort of - we're prepared to have, sort of, further discussions over those allowances to see if we can get to some sort of agreed position and if we're unable then, I suppose, we'd have to bring those before yourself to be decided. There was a proposal on Wednesday that we leave these allowances until after the restructuring exercise is finalised, which is looking to be the end of the financial year and, you know, that may well be an opportunity for people to see where they fall out after they're graded, where they sit in the levels once they're graded. And then we will address the issue of these allowances as to whether they are skill-based or some other type of allowance.

I suppose we're just putting on record that it's, sort of, our intention to tidy up the award in respect of these, sort of, allowances and our initial position would be that there's no real double counting - we can't have allowances on the side whilst we've got points under the order which allow people to move up through the grading structure.

COMMISSIONER GOZZI: All right, thank you, Mr Jefferies.

MR JEFFERIES: Thank you, Mr Commissioner.

COMMISSIONER GOZZI: Mr Long?

MR LONG: If the commission pleases, what Mr Jefferies says is correct; we've had discussions on those matters and we are in agreement with them. I just want to make some comment in relation to the skill-based allowances and in particular the riggers allowance where it says under clause 8 subdivision (2) - we may leave it until we come back with argument in relation to those -

COMMISSIONER GOZZI: If you can't settle it, yes. It's my understanding what's currently there before me is really a reflection of the status quo with the exception of the inclusion of supplementary payments for the allowances, at this stage, and the changes. There's nothing here about skill-based allowances, as I can see. I'm happy to leave that until you've had some further discussions on it.

MR LONG: Yes, well I've got nothing further to add, Mr Commissioner.

COMMISSIONER GOZZI: All right. Mr Adams?

MR ADAMS: Thank you, Mr Commissioner. Yes, we are in agreement with what the draft order indicates. One problem area that we have got, and it relates to the comments Mr Jefferies made about the skills-based allowances, and also what does the commission believe how much further does the commission want the parties to progress in modernising the award over the next few months.

Because of what is occurring at Risdon with restructuring, with the grading and assessment and all these sorts of things, and that there are different levels being achieved by different groups of people in that the production workers in most areas have been already graded, and some of the trades areas have and some have not, that's one of the problems that we have got with having a look at what the skills-based allowance - what effect it is going to have on the membership out there. And, from my own satisfaction, I would like to know where the commission would like us to be in, say, 3 months time with the modernisation of the award.

It is my view that apart from the tidying-up exercise that we have done we can't do a great deal more about modernising the award until we have actually put everybody into a structure, more or less got an understanding of the sorts of training plan and that that is required to move people through that structure, and then you can have a look at what effect that is going to have on the rest of the award and how you modernise it from then on in.

COMMISSIONER GOZZI: Yes.

MR ADAMS: That's basically where we are at at the moment.

COMMISSIONER GOZZI: All right. Thanks, Mr Adams. I will make some comment about that in a tick. Mr Becker?

MR BECKER: Thank you, Mr Commissioner. We also agree with the wording of the draft order. Obviously there has to be lots of further discussion, and I don't know where that is going to lead us in terms of the points versus the skill-based allowances. But, however, I suppose inevitably we'll get back here by one virtue or another to sort it out.

But a point of clarification. If I may ask Mr Jefferies and perhaps my colleagues - I wasn't there at this meeting - but since we have broken the - if we go to the draft order,

clause 8 - Wage Rates, we see there where - let's just take the subdivision (i) tradespersons and take Grade 1, it is 409.90 as a base and a supplementary payment made up of a skills-based whatever - not skills based but -

COMMISSIONER GOZZI: Work-related allowances.

MR BECKER: - work-related allowances, 37(e). I presume that when we come to overtime that the 447.70 in the third column would be divided by 38?

COMMISSIONER GOZZI: Mr Jefferies?

MR JEFFERIES: With the exception the - my understanding is the allowances which went to make up the supplementary payment were being paid for all purposes - so, really, I suppose you would have the 447 divided by 38 and multiplied by 2 for an overtime provision. That was my understanding.

COMMISSIONER GOZZI: Well, that's the way I would read it, and I suppose the other question that you might have relative to that is that the RBF, or your WERAF contribution - I know it's separately - I know it is a separate arrangement but, to all intents and purposes, these would be ordinary time earnings.

MR JEFFERIES: Yes, we had some discussions about the WERAF situation. It is probably not something I wish to jump into full bore, but I suppose - I had some discussions with Martin yesterday - and I think they will still be maintaining for the 409.90 as the base rate.

COMMISSIONER GOZZI: Well -

MR JEFFERIES: I think that that issue has to go before the trustees, and there is some sort of - there will be some meetings directly.

COMMISSIONER GOZZI: Well, I am quite happy to entertain at any time a definition on ordinary time earnings as far as this award is concerned. I want argument about it.

MR BECKER: Well, I think basically if Mr Jefferies is agreeing that in the case scenario we just pointed out, then I think the argument

COMMISSIONER GOZZI: So, it's an all-purpose rate. You are paying it now as the total weekly rate for 38 hours, and to all intents and purposes that is the ordinary earnings of employees. I mean, otherwise, why put it into the wage rate?

Now, there might be compelling reasons that I don't know of, why it should be 409 for ordinary time earning purposes, but if that's the case then what you are asking me here to do would be ultra vires almost. It would be a nonsense. Because

what you are asking me to do, and what I have indicated I am prepared to do, is to role into a total weekly rate your all-purpose amounts to save you the hassle, as you have pointed out to me, of having to calculate all these things separately.

But, really, if there is going to be an argument on it, I suggest you have it sooner rather than later, and it may well be that you might want to centre it around the definition of ordinary time earnings as far as the award is concerned.

MR JEFFERIES: I'll take those comments on board, Mr Commissioner, and convey them to the relevant people.

COMMISSIONER GOZZI: I mean - yes - what I'm saying, capacity is there for the amount to be determined as far as this award is concerned, notwithstanding that the superannuation operable out there is not enshrined in the document. I mean you've got your WERAF agreement, but the fundamental to that agreement is - well the fundamental occupational superannuation is ordinary time earnings. Mr Becker, anything else?

MR BECKER: No, that's it, Mr Commissioner, thanks.

COMMISSIONER GOZZI: Mr Clifford?

MR CLIFFORD: Yes, Mr Commissioner, not being able to be at the meeting the other day, what's been put up so far, I don't see any major problems with, but I would certainly appreciate a little bit of time to read through what's been put up and get back to you to give our commitment to draft orders.

COMMISSIONER GOZZI: All right, thank you, Mr Clifford. Anyone - anything else? Well with respect to your observations, Mr Adams, it's no secret I want to close this file, get out of this file and deal with any associated matters by way of new application. I always see the end point, I guess two ways; one is the translation of people from the old structure to the new structure, and the modernisation program maybe leading to a new award document. Now that's not absolute but I sort of had in mind that commensurate with award modernisation there would be a new document, but the way it's been happening on that point, we're really addressing it through hearings such as this, and it may be at the end of the day there's not too much more to modernise or you might decide collectively that once all the translation process has been completed that you'll then sit down and then perhaps redraft anything that needs redrafting.

I don't necessarily see it that the application should be kept open for that reason alone. In fact if the parties now are able to indicate to me that the sort of steps that I outlined

here in that decision of 26th March are not necessary, i.e., for me putting down some more monitoring hearings to get the matter progressed to finality, then I would probably close the file with this matter here and leave the skills-related issues, if they need to be resolved, come back by way of separate application.

The only qualifying remark that I make is that the SEP agenda material that was put before me was extensive. I mean there is a whole lot of material and initiatives that were contemplated and if any of those initiatives needed further attention, well I'd be quite happy to have one final hearing on those issues before closing the file and determining those issues as part of this process.

It's really a matter of the ball is in your court with respect to that. But where I'm sitting at the moment, I've just been advised that the translation is in endeavoured - will - or not endeavoured - will be finalised by the end of this financial year, so the basic classification matters will be out of the way. It's my understanding that the other matters are progressing satisfactorily - it's the parts of the agenda - so there's really no purpose in keeping this open beyond - beyond this matter today.

With respect to the skills-based allowances matter, the only comment I would make at this stage is that whatever you do, there can't really be double counting. You either get it in one basket or you get it in another. I mean prima facie that's - that's the way I see it.

MR LONG: Well in relation to some of those skill-based allowances, we don't see them as skill-based allowances and if you go back through the history of how they were put in there and that's argument we'll have to have in the future.

COMMISSIONER GOZZI: Yes, I mean - I mean to me it's neither here nor there, but I'm just really talking prima facie. I'm just sort of - off the top of my head making some general observations. You either retain that amount of money to the individual and he gets it outside any other translation -

MR: Translation.

COMMISSIONER GOZZI: - yes, or, you say, well look, we'll give you a value for it, it then becomes a person's all-purpose rate for the award, and those that want to aspire to it can aspire to it and get it and use it as a basis for progression by way of points of accumulation.

Now you'll have to make the decision. I don't think it's a pretty hard - I don't think it's a hard decision to make as to where you get the most value - where does the person get the most value for it. And I'd say you get the most value as

being part and parcel of the base rate, because you don't - well - I won't go on beyond that. I mean -

MR BECKER: I think it's all inept though, Mr Commissioner, with the training. I mean if the training was up to the same speed as the other then I think people wouldn't have this - wouldn't have this problem. But I mean the fact is that if you get, say, say for the first aid you got 32 points and you've got 400 at this grade and it just takes you to 432 which you still need 70 more, now if somebody doesn't provide the training, then it doesn't matter how many - how many 32 points you've got, you could be there till the next time Collingwood wins the grand final.

COMMISSIONER GOZZI: I've already been burnt once on that.

MR JEFFERIES: Mr Commissioner, I suppose for - it might be easier just to maintain this file open until we've had those further discussions regarding skill-based allowances and at that stage if we just schedule in one further report-back hearing and to see how we've progressed the issue of skill-based allowances and if we've reached any consent sort of - consent position, then we can report that back on the day that we have just one more report-back hearing for this, and - and at that stage if we're unable to resolve it then perhaps if we could close the file and then deal with it by way of separate application as you've suggested.

COMMISSIONER GOZZI: Well, I'm happy to do that. I mean as I say, it's neither here nor there to a certain extent, but I do think from all our points of view it would be desirable to have an end point to this exercise on the basis that you've sat down and you've looked at the directions, you've looked at what needs to be done, you've come to some sort of conclusion about that and you go on into the next step, whatever that next step may be.

MR BECKER: If I can just close off on that skills-based thing, just so as it's there for the record. I mean, just so long as people are not pointing to it as just a nonsense that, you know, people are trying to hang on to this or that. Now one of the scenarios is that, for instance, in our group and I guess in all the other groups you can get to the top of the tree without some of these things, right.

COMMISSIONER GOZZI: Yes.

MR BECKER: I mean, you can. I mean, there's no risk about it, you can get there.

COMMISSIONER GOZZI: Right. Yes, there'd be alternatives for it.

MR BECKER: That's right. For instance, we could get to level 7, some of our people, and then, for instance, they could then on top of that get this industrial electronics certificate. Now basically speaking, if we used that narrow base that we're talking about, they could get paid for it. So no-one would aspire to it. I mean, that's really the scenario, not just being pigheaded about it. The fact is that some people will go that way to get it, others will go over and go that way to get it.

COMMISSIONER GOZZI: Well no doubt there are a lot of other scenarios that you could talk about. I'm just simply saying from one perspective there are advantages to have it as part of the base rate and those advantages are obvious. On the other hand, you can get the situation that you've alluded to where the certificate will only take you half way up towards the next grade and you might be sitting there, whereas if you didn't throw it in the bin for the points tally you'd be getting the allowance as a separate payment.

They are issues that need to be sorted out, no doubt, between you and you can have a look at them. I mean, as I say, fundamentally you can't count it twice, you can't double count with it.

MR ADAMS: I think, sir, that we would accept that but, as I said at the meeting the other day, it depends on what side of the fence you're sitting from as to whether you're double counting it or whether you're double dipping it.

COMMISSIONER GOZZI: What's the difference?

MR ADAMS: Well in some respects people could be having from one side of the fence two goes at getting it recognised but from the company's point of view it can also been seen as people being given an equivalent amount of points for a particular thing which will - may, as Kerry said, bring them up a grade which will give them a payment. On the other hand they lose more in actually achieving that. Now really it gets back to some of the fundamental principles about structural efficiency and about people not losing and when that actual point is from when they're not supposed to lose.

Because in all intents and purposes people, if they had those skills back when this whole exercise started, they're more or less being - and that's all going to start to come up now. That's one of the problems that I see that really, I think, the parties are going to have to sit down, once everybody is graded, and look at the whole thing. But that's what I'm saying, what outcomes did you want from this because we may need to close this file and then re-apply because I think there's going to be a whole myriad of problems associated with these sorts of things.

COMMISSIONER GOZZI: Yes, well I'd prefer if those problems deal with it outside this because fundamentally this put the vehicle in place and I don't think it can go on for ever and a day to fine tune what needs to be done. I think those things need to be dealt with separately. But there is another variable in all of this - and you could perhaps agree - that where the point, say, for a first-aid certificate take you only part of the way to the next grade, that you hold that out, those points out, you pay the allowance for the first-aid certificate if it's required by the employer, till such time as the basket of goodies, points, are sufficient to take you to the next grade. I mean, that's another variable.

So where genuinely that skill is required but it's already - would take you above the skills basket of the rate that you're getting paid, then you might say: Well fair enough, we don't want that skill for nothing, and there's an allowance there for it, we'll pay it by way of an allowance, as you have done, and if the person makes up the other 50 or 60 points, whatever is required to go to the next grade, by the acquisition of other skills, well then that falls off and then that's it.

MR BECKER: That would certainly suit the scenario of the other one I put up where you've already got to the top of the tree and you have these things on the outside and if the employer wishes to use them, then the avenue would be there for him to pay the allowance.

COMMISSIONER GOZZI: But once having used it, then to make up the points to get to the next grade - well that's extinguished then.

MR BECKER: I understand that.

COMMISSIONER GOZZI: I mean, that's off the list. I mean, look, I'm making these comments without prejudice. I mean, just something that you can have a look at, but fundamentally if the intention is - and I agree that the intention was that nobody would be disadvantaged - well then that's one way of looking at it or another way of looking at it. All right, well these award changes that have -

MR JEFFERIES: Well we could take those comments on board, and that's a possibility, and have some further discussions and maybe report back, like I originally suggested, and have just one final report-back hearing over these skills-based allowances.

COMMISSIONER GOZZI: Yes, that's fine. As I say there might be a whole lot of other scenarios that can be discussed and variables that can be discussed as well. I mean, that's just some of the ones that come to mind at the moment. I'll endorse the variations as put forward in Pasminco.2 and give

you a decision on that and an award variation. We'll go off the record and set another date.

OFF THE RECORD

COMMISSIONER GOZZI: These proceedings are adjourned to 3 July. Thank you.

HEARING ADJOURNED

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2692 of 1990

IN THE MATTER OF an application by
Pasminco Metals-EZ to vary the
Electrolytic Zinc Award

re structural efficiency principle

COMMISSIONER GOZZI

HOBART, 3 July 1992
Continued from 16/4/92

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Have we got changes in appearances in that matter?

MR K. BECKER: If the commission please, I do not know whether I did note it but I am appearing also for the Plumbers and Gasfitters Union and the commission has a letter to that effect.

COMMISSIONER GOZZI: Thank you. Anybody appearing for the metal workers? Right, nobody is. Mr Adams did phone yesterday to say that he would not be here today. This matter was adjourned for you to consider the question of allowances. Where are we at with this matter now? Mr Jefferies?

MR JEFFERIES: If the commission please, there have been some discussions between the parties and we have really come to position that we - we are going to wait until restructuring has been finalised in its entirety in terms of calculating back pay, et cetera, and then see where we are at the end of that exercise, and in conjunction with the unions we can have a look across the whole site and see where people have ended up and then, once again, continue to address the issues of skill based allowance and the other issues in award modernisation.

So, basically, we would be asking that maybe the file be closed and then we will, sort of, be able to have further negotiations with the unions, we would come forward with an application to vary the award by some sort of agreed - with an agreed position hopefully.

COMMISSIONER GOZZI: Fine, thank you. Everyone agree with.

MR LONG: Yes, we have got no problems with that, sir.

COMMISSIONER GOZZI: Right, okay. In the circumstances the file will be closed and I will leave it to you to keep me in touch as may be appropriate.

HEARING CONCLUDED