

**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 the making of  
a new award

re Shellfish Farming Award

COMMISSIONER WATLING

HOBART, 10 December 1991  
Continued from 13/11/91

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER WATLING: I'll take appearances please?

**MR G. COOPER:** If the commission pleases, G. COOPER appearing for the AWU.

COMMISSIONER WATLING: Good. Thank you.

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

COMMISSIONER WATLING: Good. Thank you. Mr Cooper?

MR COOPER: Mr Commissioner, it's with some regret and also some relief that we're here before you today. This award has been - as you're well aware - the product of much discussion with respect to the parties, since we adjourned on the 13th of November last, but we are not in the position to proceed today, and I'll briefly outline to the commission why that is the case.

Since we met last time we've prepared a total of three new drafts with respect to the award, picking up the points that were raised in discussions with yourself on the 13th of November and also in relation thereto, establishing a hours of work clause that wasn't ambiguous as such. Now with respect to the three drafts, the three drafts have reflected, first of all, the changes as the AWU saw them, then with respect to the TCI as they saw them and then with respect to the agreed position on the majority of clauses, except with respect to the hours of work clause.

And we went to the hours of work clause and rather than try and develop it as it was submitted in AWU.1, the parties - after three full day meetings - have adopted a different approach which impacts further on other clauses of the award. Now with respect to what was submitted in AWU.1, it went to 38 hours a week. It never had a prescription for the employer to organise the hours of work. It never had a prescription for the employer to delegate and arrange the days and weeks. So in trying to attack that problem, we came up with a number of scenarios which were actually submitted in five, hours of work drafts, and as a result of those now we have identified with some other problems that impact on other clauses of the award.

Now the guidelines that we've struck upon are similar to that which is contained in the Metal Industry Award of 1984 in that the ordinary hours of work shall be an average of 38, and they are defined then the cycles that shall be worked; 38 within 5 days - 5 consecutive work days that is - 76 within 14; 152 within a month and so we've defined that now. But as a result of going down that track we then realised that the AWU.1 was deficient in that it didn't prescribe specifically for when the accrual shall be taken and that was with respect to hours of work, and also with respect to accrual on overtime. So

we're now developing, and we've nearly finalised it with those two clauses, the proper words that will allow for the implementation of the accrual system.

And in also doing that clause, we came up with another matter which was how does the employer and the employees agree, and on the original basis it was to be individually, but then for a larger employer, he could have a major problem with individual employees agreeing to a hours of work clause and other employees not, so we had to tackle the concept of the majority of employees and that led to other implications throughout the award.

So in trying to solve the problem, it's not that the parties haven't endeavoured to reach agreement, quite the contrary. We have developed three drafts; we have developed five, hours of work clauses, and we are now at a position where I think we can agree, but we're not in the position to submit to the commission a document that is satisfactory for progress at this stage.

Now the AWU was aware that this would happen as late as Friday, but the parties were fairly confident that things could progress and it wasn't until after 12.30 yesterday that I contacted the commission, and of course, it was too late then to seek an adjournment to allow the matter not to be heard today. So instead we're here before you - and I do apologise for that - seeking an adjournment, but I think it is in the interests of both parties that the matter be adjourned to allow for the development of this clause - the hours of work clause - for the development, for the development of the clauses that it impacts upon, for consideration of that and then to bring the matter back to the commission again.

Now I've also discussed with the parties, the implications of that and the AWU must express its concern with respect to these employees remaining award-free for an extended period, but - but we think it would be in the best interests of both parties to have an award that properly reflects and safeguards our members rather than to have - put up an award in haste and then suffer the ramifications of inadequacies - and there were a number of inadequacies that we discovered to AWU.1 and I think that reflects poorly on the parties to come to the commission in the first instance with an AWU.1 that was deficient, but I think it will be better to adjourn the matter so that we can come back to the commission with a proper document. If the commission pleases.

COMMISSIONER WATLING: Thank you. Mr Fitzgerald?

MR FITZGERALD: Thank you, commissioner. I would support the application for an adjournment, reluctantly. The employers were keen to see this matter finalised today, but the events which Mr Cooper's reported to you since the last hearing on



the 13th of November is in fact a true representation of what has occurred. We would support Mr Cooper's comment in that there had been some very genuine attempts and some long hours spent to come to a conclusive agreement, particularly in respect of the hours of work. I think it reflects the needs of the industry as to why that matter has taken so long and we're trying to preserve the agreed situation in terms of, if you like the best way to describe it would be, a notional week where Saturday and Sunday are abandoned as traditional weekend days and penalties only apply on respect to the sixth and seventh day of any week period.

Now we're trying to preserve that agreed situation which is embraced in AWU.1, but to better represent it in the clause, and for that reason - and it also has, of course, some other implications, which Mr Cooper has outlined to the commission.

We - following yesterday's meeting, we're reasonably confident it can be fairly quickly now brought to an agreed format clause which can be presented to the commission for the next available hearing. I, like Mr Cooper, also believe that as this is an award-free area we're keen to in fact award coverage to those employees and employers, however, given the importance of the issue and given the uniqueness of the various factors in this industry, we believe that that format should be totally correct and rather than hastily push it through today, we would seek - we would therefore support the adjournment - or the application for adjournment made by Mr Cooper. If it pleases.

COMMISSIONER WATLING: Right. Well, I have to say that I'm not overly happy about the adjournment, but I recognise that these things need to be dealt with and therefore it's with some reluctance that I grant the adjournment. We'll now go off the record to look at an appropriate date to resume.

OFF THE RECORD

COMMISSIONER WATLING: This matter stands adjourned until Thursday the 13th of February at 10.30 am. Thank you.

HEARING ADJOURNED