IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act, 1984.

T.No.78 of 1985

IN THE MATTER OF an application by the Tasmanian Electro Metallurgical Company Pty. Ltd. to vary the AWARD OF THE FERRO ALLOYS INDUSTRIAL BOARD.

Re: Conditions of Employment.

DEPUTY PRESIDENT A. ROBINSON

HOBART, 16 APRIL, 1985

REASONS FOR DECISION

APPEARANCES:

For the Tasmanian Electro Metallurgical Company Pty. Ltd. - Mr. T.J. Abey with Mr. D.G. Mackrill and Mr. K. Brotherson

For the Federated Ironworkers Association (Tasmanian Branch) - Mr. J. Glisson

For the Transport Workers Union of Australia (Tasmanian Branch) - Mr. K. Bacon

For the Amalgamated Metal Workers Union (Tasmanian Branch) - Mr. M.K. Hill

DATE AND PLACE OF HEARING:

28 March, 1985 Launceston.
The parties to the hearing sought a number of award variations 'by consent'.

Broadly, the changes sought can be categorised as follows:-

1. Alteration of the title of the award to "Ferro Alloys Award".

2. Deletion of the amount of $15-60 in Clause 6, 'Disability Allowance', and insert in lieu thereof the amount $18-00.


The Commission was asked to ratify the agreement of the parties as:-

1. Representing an agreement reached without duress and in an amicable atmosphere.

2. In the context of the only general review in the past five (5) years.

3. Not being contrary to 'public interest'.

4. Not being contrary to the provisions of current Wage Indexation Principles.

It was also put to the Commission that there should be a realisation that the Tasmanian Electro Metallurgical Company Pty. Ltd. (TEMCO) operates in the Bell Bay industrial environment within close proximity to certain other industries.
It was submitted by Mr. Abey, for the Employer, that whilst no nexus or other special relationship exists between different industries employing labour in close proximity, one cannot pretend such other industries do not exist, and some of the concessions recently agreed to were influenced, to some extent, by what is applied by other employers in the same locality.

Nevertheless, the cost of the total package agreed to was not considered by the Employer to be excessive, and is therefore capable of being ratified as a consent matter.

Turning now to the specific items listed, I shall deal with them seriatim.

Item 1.

Change in name of the award from the "Award of the Ferro Alloys Industrial Board" to the "Ferro Alloys Award".

This is simply a consequential variation following the changed legislation which abolished industrial boards.

Item 2.

Increase of existing 'Disability Allowance' from $15-60 to $18-00 per week of 40 hours.

The 'disability allowance' was last increased from $14-60 to $15-60 effective from 2 April, 1984.

If the present disability allowance was increased by a further 4.1%, in accordance with Principle 9(a)(ii), by applying the increase granted in the 4 April 1984 National Wage Case Decision (Print F5000) the new rate would be $16-20. However, it was agreed, by the
parties, to grant a further $1-80 to bring the new figure to $18-00.

Mr. Abey described the $1-80 as representing a specific component to assist employees in meeting the cost of laundering protective clothing and the purchase of ancillary clothing. It was argued that the proposal is clearly allowable under Principle 9(a)(i) or 9(b)(ii).

The Company expressed its opposition to the creation of a new allowance dealing with laundering of protective clothing, particularly as it does not accept that the Company should be responsible for the whole of such cost, but only a component for part thereof.

There is not currently an award provision covering laundering of clothing, but there does exist a practice at TEMCO whereby laundry of overalls at Company expense occurs under circumstances where employees have been subject to a particularly dirty work environment. The cost of laundering a pair of overalls is in the order of $2-00 at present.

**Items 3 and 4.**

Delete Clause 5, Part II, and insert in lieu thereof the following:

"5. Night Work for Other Than Shift Workers

Day workers who are required in lieu of ordinary day work to work at nights for periods of less than 5 consecutive nights shall be paid at the rates prescribed by sub-clause (a) and sub-clause (d)(i) of Clause 7, 'Overtime', by sub-clause (a) of Clause 11, 'Sunday Work' or Clause 12, 'Holiday Work'."
In this clause "night" means any hours between 4.00 p.m. and 8.00 p.m."

And add at the end of sub-section (i) of sub-clause (d) of Clause 7, Part II, the following:

"For the purpose of this sub-section, "in lieu of shifts" as provided in Clause 5 shall be considered as overtime."

The effect of such change is to treat "in lieu of shifts" as overtime for the purpose only of the rest period clause, i.e. 10 hours off between the work of successive days etc.

As Mr. Abey correctly pointed out, this matter has been the subject of a number of disputes in the past.

**Item 5.**

Delete sub-section (v) of sub-clause (d) of Clause 7, Part II, and insert in lieu thereof the following:

"(v) An employee required to continue at work on overtime for more than 2 hours after his ordinary ceasing time shall be provided, free of cost, with a suitable meal and, if the work extends into a second meal break, another meal.

Provided that in the event of meals not being provided by the employer, he shall pay to the employee a meal allowance at the rate of $4-40 for the first and each subsequent meal."
The proposed change simply removes the existing words from the clause:

"without having been notified before leaving his work on the previous day that he would be required to work overtime"

and gives an automatic right to a suitable meal free of cost or the payment of the meal allowance of $4-40.

It was pointed out by Mr. Abey that the change sought will bring this award into line with what already applies to other employees working in the immediate area of Bell Bay and is to be found in other awards of this Commission, such as the Retail Trades Award.

Mr. Abey submitted that this proposed variation should be viewed by the Commission only as a consent matter reached in the context of the Bell Bay environment and not going to the general question of merit, and indeed, reserved the right to contest the introduction of the same provision under different circumstances, at another time.

**Item 6.**

Delete the first paragraph of Clause 12, 'Holiday Work', Part II, and insert in lieu thereof the following:

"All work performed on any of the holidays specified in Clause 10 hereof shall be paid at the rate of double time and a half."

The effect of such variation, if granted, would be to give shift workers double time and one half in lieu of double time for working on a public holiday specified in the award.
Item 7.

By inserting at the end of the first paragraph of Clause 16, 'Compassionate Leave', Part II, the following:-

"Provided further that where an employee is required to travel outside Tasmania to attend the funeral, up to 5 days paid leave shall be allowed in lieu of three days hereinbefore prescribed."

The effect of such variation is self-evident.

Mr. Abey recognised that both items 6 and 7 arguably go beyond what might be considered 'State standard' but pointed out that what is sought is not without parallel in a limited number of awards, including those applying in the immediate Bell Bay area.

The Commission was asked to view the proposed variations in the context of being consent matters only, and reached in the Bell Bay environment, against the background of no award review for the past 5 years.

Item 8.

Delete the word 'lawfully' in sub-section (i) of sub-clause (1) of Clause 17, 'Annual Leave, Part II.'

The effect of the variation sought would be to create an entitlement to pro-rata annual leave to an employee, who after one week's continuous service in his first year of employment, where such employee UNLAWFULLY leaves his employment, presumably without giving proper notice of termination.
The proposal was put forward as a consent variation in the light of the industrial environment existing at Bell Bay; having "virtually no cost impact"; and having positive industrial relations benefits.

Item 9.

Insert new Clause 24, Part II, as follows:

"24. Rest Period

Day workers shall be allowed a 10 minute paid rest period during the first half of the day."

This proposed provision is to include in the award what is the well established practice which already prevails at the TEMCO plant. Thus, there will be no extra cost incurred as a result of such new award provision, if accepted.

Item 10.

Renumber existing clauses as a consequential variation.

COST IMPACT OF PROPOSED VARIATIONS.

Exhibit A1 itemised the total cost of the proposed award variations (see attachment).

The estimated annual cost is $109,000 which represents 1.26% increase on the 1983/84 wages bill.

It was submitted that this was not an excessive cost increase, when viewed in the context of no award review for 5 years.
GENERAL SUBMISSION

It was submitted that the cost impact would not be excessive and therefore would not be contrary to the current Wage Fixing Principles, and specifically Principle 11.

It was further submitted that the proposed variations would not affect the price of TEMCO's product, as this is determined by world markets.

The Commission was asked to ratify the agreement of the parties as representing an agreement reached without duress and in an amicable atmosphere; in the context of the only review in the past 5 years, and not being contrary to 'public interest' or the Wage Fixing Principles.

The general comments of Mr. Abey going to proposed award variations were supported by Trade Union representatives present.

Mr. Hill indicated, in particular, that the parties had been very mindful of, and careful to consider the requirements of the Wage Fixing Principles. He indicated that no breach of those principles would eventuate if the Commission ratifies each of the proposals put forward.

It was submitted by Mr. Hill and his colleagues that the proposals will not offend public interest but will, in fact, substantially contribute to continued harmonious industrial relations at the plant concerned.
DECISION.

The Commission is asked to vary the award to embrace each of the matters agreed upon regardless of merit, other than the two criteria of:

1. Conformity with the current Wage Fixation Principles, and

2. Public interest.

In not involving itself in the question of merit, the Commission was in effect asked by the Employer to acknowledge that consensual matters are a fact of life, that they carry little or no weight so far as to likely flow-on to other non-consenting parties is concerned, and the Commission is not necessarily the guardian of what might be termed 'State standards' in such circumstances as this.

Conceivably, in other circumstances the same or other parties could argue differently.

A further circumstance could also presumably arise if consenting parties find themselves opposed by an unwelcome intervener.

In the instance case, however, the relevant facts are that certain trade unions and a single industry employer have successfully negotiated a number of award variations without the element of duress or the opposition of an intervener under circumstances where the hearing has been publicly advertised.

Under all of these circumstances the Commission makes no comment as to the question of industrial merit of the agreed matters other than to underline the fact that they are all consent matters and not arbitrated decisions of this Commission and accordingly carry no
weight and can be of no comfort to any party which may be of a mind to use the result as setting an industrial precedent.

Turning now to the crucial question of compliance with the current Wage Fixing Principles and 'public interest', I propose to deal first of all with all of those items other than Item 2, 'Disability Allowance'.

The preamble to the Principles provides in the paragraph immediately preceding Principle 1 that:

"The Commission will guard against any Principle, other than Principles 1 and 2 being applied in such a way as to become a vehicle for a general improvement in wages and conditions."

The absence of interveners must be taken as a lack of concern as to likely flow-on by other employers. This, coupled with the fact that historically the Award of the Ferro Alloys Industrial Board has stood alone and not previously been a vehicle for flow-on leads me to the conclusion that the general conditions of employment consented to do not offend the abovementioned provision of the Principles.

The more specific provision however is Principle 11 which provides:-

"11. Conditions of Employment

Applications for changes to conditions other than those provided elsewhere in the Principles must be considered in the light of their cost implications both directly and through flow-ons."

As already stated, my judgement is that there is no perceived likelihood of flow-on, and therefore, there
cannot be a cost to others.

Direct costs to TEMCO, excluding Item 2, are estimated as $59,000 per annum and this represents a little over .6% increase in the wages bill of the employer or, if Item 2 is to be accepted, the total cost of all matters will be $109,000 or 1.26% increase in employee wages in a full year.

Viewed in the context of no review in general award conditions for 5 years, and the stated industrial relations benefits, I conclude that the direct cost effects may be considered as a small addition to overall labour costs.

I therefore decide to accept the consent variation and Items 1 to 10, but excluding Item 2, at this stage, will become part of the award.

Item 2 is a proposal to increase the existing disability allowance from $15-60 to $18-00.

Principle 9 provides as follows, inter alia:-

"Allowances and service increments may be adjusted or awarded only in accordance with this Principle."

Clearly, the existing 'disability allowance' may be adjusted by 4.1% in accordance with Principle 9(a)(ii) and this would create a new figure of $16-20, but the parties wish to add a further $1-80 to bring the allowance to $18-00 to partly compensate for laundering of protective clothing and purchase of other items, and Mr. Abey seeks to rely upon 9(a)(i). This he cannot do because the existing disability allowance is not an allowance which constitutes a reimbursement of expenses incurred. It is an allowance which relates to work or conditions which have not changed.
Reliance is also placed upon 9(b)(ii) which provides:

"New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to such expenses."

The employer is opposed to the creation of a new allowance although union representatives are not.

Had I been called upon to arbitrate the matter of a "partial" new allowance it would be a different matter, but I really am not.

I am not prepared to increase the existing disability allowance by more than 4.1% under present circumstance and thus my decision is that the new figure will be $16-20.

Leave is reserved for either party to raise the question of creating a new allowance.

Public Interest

I have had full regard for the public interest requirement of Section 36 of the Industrial Relations Act 1984, and am satisfied that the final result does not offend this criteria.

Operative Dates

In accordance with the agreement of the parties the operative dates of effect:-

Item 2 - Disability Allowance - from the first pay period to commence on or after 10 February 1985.
All Other Items—From the first pay period to commence on or after 28 March 1985.

ORDER

The Order of the Commission will follow.