

**IN THE TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

**T. No 577 of 1986**

**IN THE MATTER OF** an application  
by the Tasmanian Chamber of  
Industries for interpretation  
of the Furnishing Trades Award  
and the Building Trades Award

**re** Scope of awards, Definitions  
and wage rates

PRESIDENT

**HOBART, 13 March 1987**

**TRANSCRIPT OF PROCEEDINGS**

(RESUMPTION)

PRESIDENT:

Are there any alterations to appearances previously announced? If not, I will invite you to continue with your application, Mr Edwards.

MR EDWARDS:

Thank you, Mr President. Mr President, in this matter you are asked to determine the appropriate award coverage applicable to the employment of a Mr Gary John Clark employed by Challenge Pty Ltd in their business known as Challenge Kitchens at 46 Grove Road, Glenorchy on the 28th day of October 1985.

It will be our intention to argue that the employer's business falls squarely within the scope of clause 2 of the Furnishing Trades Award, reinforced by the provisions of clause 33, 'Scope of Division I' of the award, and that the employment of Mr Clark likewise falls squarely within the provisions of clause 1 'Wage Rates' of clause 8 as a Furniture Maker Grade A.

The alternate proposition which has been expounded, we understand, by the Department of Labour and Industry, and brought a prosecution of the employer, is that the work of Mr Clark falls within the province of the Building Trades Award.

The basics of the employment history, brief though that was, are outlined in transcript on pages 1 and 2 of the last day of hearing, being 28 January 1987 and, as I see it, there is little point in developing those aspects further at this time.

What I do wish to do to further pursue this interpretation is to ask Mr Graeme John Lockhart, a director of Challenge Pty Ltd, to give sworn evidence going to the nature of his business and to the duties performed by Mr Clark in his brief employment in that business.

I then intend to tie that evidence to the various provisions of the Furnishing Trades Award to

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PRESIDENT - EDWARDS

MR EDWARDS:

demonstrate that (a) the employer's business is adequately covered by the 'Scope' clause of the Furnishing Trades Award; and (b) that Mr Clark was engaged upon classifications contained within the terms of that award.

Prior to embarking on that course, I wish to indicate to the Commission that the stake in this game is the question of whether or not Mr Clark was entitled, on termination of his employment, to one week's pay in lieu of notice. It is our contention that such a payment was not due under clause 13, 'Contract of Employment' sub-clause (d) of the Furnishing Trades Award.

The Department of Labour and Industry, as we understand it, have contended that Mr Clark is owed one week's pay in lieu of notice, presumably under the provisions of clause 3 of Section VI of the Building Trades Award.

I believe it is appropriate at this time to call Mr Graeme John Lockhart to give sworn evidence as to the nature of his business, and to the nature of Mr Clark's tasks during his employment in that business.

PRESIDENT:

Yes, very well.

Graeme John LOCKHART sworn

MR EDWARDS:

Mr Lockhart, could you state to the Commission the position you hold with Challenge Pty Ltd?

MR LOCKHART:

Manager and Director.

MR EDWARDS:

How long have you been engaged in the furnishing industry?

MR LOCKHART:

Since I joined Rank Kerby which would be approximately five to six years ago.

MR EDWARDS:

Could you briefly outline to the Commission the history of the business known as Challenge Kitchens?

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PRESIDENT - EDWARDS - LOCKHART - XN

MR LOCKHART: Challenge Kitchens arose out of the departure from Tasmania of Rank Industries who were then conducting a business known as Rank Furniture. That business divided into two locally-owned and locally-run companies, one known as Century Furniture and then the other known as Challenge Kitchens. Century Furniture was a group of some of the employees who took over the wall unit and prefabricated wardrobe section of the business and myself and a couple of other people took over and continued the kitchen manufacturing side of the business previously run by Rank Furniture.

MR EDWARDS: As a matter of interest, are you aware of what award Rank Kerby paid their employees under?

MR LOCKHART: Federal Furnishing Trades Award.

MR EDWARDS: They were a direct respondent to that award?

MR LOCKHART: Yes.

MR EDWARDS: Could you explain in your own words the nature of your business, that is, lines produced, the types of work involved in producing those lines and those sorts of things.

MR LOCKHART: Primarily we make prefabricated kitchens which involves, as you may recall from the inspection, taking large sheets of white-coated particle board, cutting them up into little rectangles and then from those rectangles making various size boxes to which we then hinge a choice of doors to form the face and manufacture a bench top of the chosen laminex to suit the design of the particular room or kitchen as the customer chooses.

MR EDWARDS: What types of work are involved in manufacturing those lines?

MR LOCKHART: Machinists cutting up the sheets in the first place; edge stripping them, then drilling holes and screwing

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EDWARDS - LOCKHART - XN

MR LOCKHART: them together - that is done by a semi-skilled utility worker; cutting doors out of different coloured sheets of material; fitting hinges; making bench tops. That is the main part of the business.

MR EDWARDS: In performing those duties, what machinery is used by your employees?

MR LOCKHART: Scribing panel saws, edgebanders, occasionally where we are doing timber edge strips or timber trimmings - buzzers, thicknesses and then a variety of different hand tools.

MR EDWARDS: A variety of hand tools would include what - hammers...?

MR LOCKHART: Drills ...

MR EDWARDS: Screwdrivers ...?

MR LOCKHART: Very rarely hammers; drills and screwdrivers mainly.

MR EDWARDS: Of that work, what portion was performed by Mr Gary Clark when he was employed by you on 28 October 1985?

MR LOCKHART: The only work that he carried out was the fixing of a front timber-edge strip to a bench top and a splash-back timber, splash-back to the rear of the bench top, which had already been fabricated and covered with laminex by other members of the work-force.

MR EDWARDS: He was therefore performing some portion of the assembly.

MR LOCKHART: Yes, all he was doing was using clamps and glues to fix the edge strip to the bench tops that someone else had made.

MR EDWARDS: He was using clamps and glue. Were there any other tools of trade or machines that were used by Mr Clark in his employment on 28 October?

MR LOCKHART: I can't say for sure exactly what

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EDWARDS - LOCKHART - XN

MR LOCKHART: tools he used, but the only other part of that process that he may have performed would have been to cut the lengths of timber to size. But other than that there would have been no other duties that he would have performed.

MR EDWARDS: When you say cut the lengths of timber to size, how would he have gone about that?

MR LOCKHART: He could have used a hand saw; he may have used a power saw.

MR EDWARDS: And the lengths of timber that he was cutting, would they be these edge strips or the splash-backs you were talking about?

MR LOCKHART: Both. They were previously machined by a machinist.

MR EDWARDS: Would they essentially have been machined to size or ... ?

MR LOCKHART: They would have been machined to approximate size. They may have been a fraction longer to allow for fitting.

MR EDWARDS: When the Department of Labour and Industry officer interviewed you in relation to Mr Clark's claim, did he advise you on what basis he had determined that the Building Trades Award had application to your employment of Mr Clark?

MR LOCKHART: Yes, I was told that they had concluded that the type of industry that we were in was covered by both the Furnishing Trades Award and the Building Trades Award, by definition, and that where one or more awards were applicable, the one giving the employee the greater benefit was the one that would apply.

MR EDWARDS: Did they indicate why they had drawn that conclusion - from where they had drawn it?

MR LOCKHART: Yes, from memory it was the section which I now know to be termed section

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MR LOCKHART: 53.

PRESIDENT: Of the Industrial Relations Act, I presume?

MR EDWARDS: Yes, section 53 of the Industrial Relations Act.

How many functions did Mr Clark perform for you on 28 October 1985?

MR LOCKHART: He only carried out that one particular job of glueing the edge strip and splash-back.

MR EDWARDS: So he didn't perform two or more different functions?

MR LOCKHART: No.

MR EDWARDS: Why, and on what premise, did you initially elect to utilize the Furnishing Trades Award in the employment of your employees?

MR LOCKHART: In the process of the division of Rank Furniture into the two different businesses, one of the chaps who was then working for Rank Furniture was initially working for Century Furniture and he wanted to transfer to Challenge Pty Ltd.

So I rang Labour and Industry initially to check up on wage rates and the amount of money to pay the chap, Charlie Harris, and I was asked which award and I said, 'Well, as far as ... he is under the Furnishing Trades Award at the moment.' And a discussion took place between myself and a mature-aged person with an English accent, as to what duties Charlie would be performing.

MR LOCKHART: I was asked various different questions as to specifically whether they were doing any site work and the result of that conversation was that I was advised the Furnishing Trades Award would be applicable.

MR EDWARDS: So you were advised by an officer of the Department of Labour and Industry to utilize the Furnishing Trades Award.

MR LOCKHART: Correct. Yes.

MR EDWARDS: And yet you are now advised by them that the Building Trades Award should have had application.

MR LOCKHART: Yes, I was advised that they may have been incorrect in their original decision and that they were changing the rules of play.

MR EDWARDS: Well, I've no further questions at this time, Mr President.

PRESIDENT: Mr Lockhart, how would you describe your business? Would you describe yourself as a manufacturer, repairer, or installer of furniture and fittings, or would you describe yourself in some other way?

MR LOCKHART: Primarily, a manufacturer of furnishing items. We do offer to install the kitchens, but that's not a duty performed by salaried employees. Any of the installations are done by self-employed sub-contractors as is electrical work or plumbing, painting and anything of that nature.

So, my employees - actual salaried employees - do not do anything other than work inside the factory.

PRESIDENT: Yes. Had you in fact carried out the full range of work that Rank Kerby performed - I think that included wall units and prefabricated wardrobes?

MR LOCKHART: We do a certain amount of custom-built wall units, whereas the part of

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PRESIDENT - EDWARDS - LOCKHART - XN



MR LOCKHART: the business that we are not continuing - the part that Century Furniture continued - that's mass-produced, cheap range of wall units that you can get in furniture supermarkets, but we do the part which was custom built previously.

PRESIDENT: Yes.

MR LOCKHART: Special requests.

PRESIDENT: But had your enterprise continued under the name of Challenge, say, to have manufactured these items, I take it there'd have been no doubt that it was the Furnishing Trades Award that would have applied anyway?

MR LOCKHART: Well, it was just a continuation of something that Rank Furniture were doing.

PRESIDENT: Yes. Just excuse me a moment.

Mr Lockhart, you made reference to section 53 of the Industrial Relations Act, not because you yourself pretend to be any expert I imagine, but because it was referred - that particular section was referred to you.

MR LOCKHART: Certainly.

PRESIDENT: I'll read it to you. It says:

"Where an employee performs 2 or more classes of work to which different awards apply," (different awards apply) "he shall, in respect of all matters (other than wage rates or piecework rates) in respect of which different provisions are contained in those awards, be deemed to be employed under such of those provisions as confer on him the greatest benefits."

Now, that's what section 53 says. It seems to require that two awards apply to a particular business and in

PRESIDENT: those circumstances it requires an employee to be performing two or more classes of work, meaning that one class of work falls under one award and one under the other and section 53 does not appear to apply so far as wage rates are concerned.

MR LOCKHART: With hindsight, I now understand the industrial clause far better than I did at the time. If I'd have had the same knowledge as I have now at the time I was being interviewed, I may have had a few words to say that I wasn't aware of then.

But it's clear to me anyhow, I feel, that it's been totally misinterpreted.

PRESIDENT: Yes. Well, do any of your employees, in your judgement, perform work which might somehow or other fall within the scope of 53, or do you think they all come under the Furnishing Trades?

MR LOCKHART: Not as far as I understand. My understanding is that that's comparable to someone doing carpentry for half a day and then working as a transport deliverer for the rest of the day, and that just does not occur.

PRESIDENT: Do you recall what classification was assigned to Mr Clark?

MR LOCKHART: He was just employed as a utility worker doing ... The planned work that we were going to have him doing was basically just bench tops.

PRESIDENT: And 'Utility Worker' is a classification contained in the Furnishing Trades Award.

MR LOCKHART: Yes, I was not an expert on the award so I didn't put labels for people to fall into any particular definition. All I knew was the role in which I intended to use them.

PRESIDENT: Yes, thank you, Mr Lockhart. Any cross-examination? Mr Dowd.

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PRESIDENT - LOCKHART

MR DOWD: Mr Lockhart, in regards to Mr Clark and his first day of employment with you, you stated that he was edge stripping a particular unit. Would it be fair to say that having edge stripped that particular unit the edging itself would have to be finished to the surface of the top, meaning would it be planed off and sanded?

MR LOCKHART: No, it wouldn't be planed off. It may require a little bit of sanding in the odd spot or two, but it was pre-machined and the idea was that he would finish it in a professional fashion such that it wouldn't ... I mean, you take a plane to a laminex top with a timber edge strip on it and you're flirting with danger.

MR DOWD: You may be flirting with danger, but surely the skills of the tradesperson would come out. Only to look at the furniture item in front of us, there's an edge strip here, and that would have to be planed and finished to that particular standard as we see it there.

MR LOCKHART: With due respect, you've got two timber surfaces there. You're not marrying timber and laminex together. And if I see any of my blokes taking a plane anywhere near a laminex top I'll kick their butt.

MR DOWD: Well I would see that there is a way of finishing the surface anyway.

MR LOCKHART: A little bit of sandpaper where necessary.

MR DOWD: The types of tops that are manufactured by your company - it is my belief, from the inspections, they are not all laminex, there are some laminated.

MR LOCKHART: There are occasionally timber tops, maybe 5% of the business.

MR DOWD: I only say that because with the inspections at the showroom there was a very nice laminated top which we

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MR DOWD: saw out there on that particular day.

The cupboards themselves - how are they fixed when they go into the houses?

MR LOCKHART: Drilled and screwed.

MR DOWD: I noticed in the phone book, from the advertisement, your company is very versatile. I've just got a copy from the pink pages, the advertisement which is there.

PRESIDENT: Do you want to tender it?

We'll mark that as Exhibit D, 'D' for Dowd, 1.

MR DOWD: On the second page, top left-hand corner:

**"CHALLENGE KITCHENS  
DESIGN  
MANUFACTURE  
RENOVATION  
INSTALLATION"**

It is my belief that the advertisement there is really a fulfilling advertisement covering many aspects of the trade which would be beyond the furnishing trades.

Would you have any comment on that?

MR LOCKHART: Yes, as I said earlier, the installation side of the business is done by sub-contract labour, totally and absolutely.

If there is any electrical work to be done the chaps from the factory don't go and do it, if there's any plumbing to be done, the chaps from the factory don't go and do it. And as far as the installing or renovating or anything else that takes place in the customer's home is concerned, that is not done by any of the employees on a salary and wage basis. They do not leave the factory for that type of work.

MR DOWD: Bearing in mind Mr Clark only worked with you for one day, would you see that, if he continued his employment, there would be other duties other than just the mundane activities that he had on that particular day?

MR LOCKHART: For instance?

MR DOWD: Well, I'm asking you. What other activities would you expect from him as a person working under your employment?

MR LOCKHART: Well, I can only relate it to the chap that I engaged following his unsuccessful day's work, and that is primarily bench stocks; screwing hinges into holes that are pre-drilled and fixing the doors by way of a Philips head screwdriver to cabinets.

MR DOWD: So that would be putting Laminex on bench tops?

MR LOCKHART: Yes.

MR DOWD: Edge stripping?

MR LOCKHART: Edge stripping, yes.

MR DOWD: Fixing?

MR LOCKHART: The fixing of what?

MR DOWD: The tops to the carcass.

MR LOCKHART: No. No, that's done by the sub-contractors on site.

MR DOWD: That's all, Mr President.

PRESIDENT: Yes, thank you. Is there re-examination, Mr Edwards?

I thought you might have taken the witness through the various scope clauses of both awards to enquire of him if he performs any of the work, say, set out in the Building Trades Award, but that's ...

MR EDWARDS: I had intended to deal with that by

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- XXN

MR EDWARDS: submissions, Mr President, inasmuch as I think Mr Lockhart has described the nature of his business and I was going to try and tie that into the scope clauses. However, if you prefer, I'm prepared to do that.

PRESIDENT: No, it's because this is re-examination anyway. I simply make that observation, that's all.

MR EDWARDS: I had intended to deal with it by submissions and just tie in what Mr Lockhart has said to the various scope clauses.

PRESIDENT: Very well.

MR EDWARDS: Mr Lockhart, the President raised with you the question of section 53 of the Industrial Relations Act and quite rightly read to you that it requires a number of different things to come into play. The first is that different awards must apply. Presumably, the employee would be required to perform a class of work under one award and a class under a different award. Are you of the view that Mr Clark fell into that category?

MR LOCKHART: No, most definitely not.

MR EDWARDS: So, in your opinion, he was engaged in only one class of work?

MR LOCKHART: And only one job within that one class.

MR EDWARDS: I've no further questions, Mr President.

PRESIDENT: You're excused, Mr Lockhart. You may retire or remain, as you see fit.

MR EDWARDS: Mr President, I wish now to commence submissions in support of our contention that Challenge Kitchens is an employer engaged in an industry described by clause 2, 'Scope', of the Furnishing Trades Award. The 'Scope' clause of the Furnishing Trades Award reads as follows:

MR EDWARDS:

"This award is established in respect of the industry of:

Manufacture, repairer or installer of -

(a) Furniture or furnishings;"

I think that's as far as we need go in respect of those items listed by (a), (b), (c), (d), (e), (f), (g). But I would include the words included at the bottom of the 'Scope' clause, and it says :

" - and covers the work and persons performing such work more particularly detailed in Clause 33 - Scope of Division A."

I wish to just quote from clause 33 - 'SCOPE OF DIVISION A' where it says:

"This award shall cover the following work and persons performing such work:-

1. Any person employed in wholly or partly preparing, packing, manufacturing, or repairing any article of furniture (including built-in furniture) or in repairing any new or second-hand article of furniture usually made or partly prepared by cabinet makers, chairs and couch makers, upholsterers, wood carvers, french polishers, wood turners, and wood machinists."

I don't think I need go any further in respect of that particular 'Scope' clause because I think as far as is necessary that explains the nature of the employer's business.

We believe that the industry engaged in by Challenge Kitchens very clearly fits within the ambit of those two clauses. Challenge Kitchens manufacture both by pre-fabrication

MR EDWARDS:

and to order, kitchen cabinets and benches which are sold direct to clients. Challenge Kitchens do not fit the cabinets into the client's premises, that is done by sub-contractors; they merely make and sell the units to clients.

The fixing or installation of the cabinets is, as I have said, done by subcontract and simply requires, for reasons of stability, a screwing into the existing wall of the client's house.

There is no definition in the Furnishing Trades Award as to what constitutes 'furniture'. However, we believe that the cabinets would clearly fit the commonly understood meaning of that term.

In saying that, I submit that awards are documents primarily composed by persons not skilled in the art of draftsmanship and, as such, should be read in such a way as to clearly reflect the true intent of the parties to the award. And that is even more so in respect of awards picked up by this Commission from the previous Industrial Board environment where, primarily, employees and employers engaged in the industry were those that had the responsibility of drafting the various provisions that go to making up the award. And in light of that belief, I submit that a 'cabinet' is widely regarded as an article of furniture.

By way of example I'll use a simple illustration. It would be reasonable to assume that a pre-fabricated wardrobe for a bedroom would be understood generally to be an article of furniture. If that wardrobe was a free-standing item it would even fit the dictionary definition of furniture. If it was screwed to the wall it perhaps transgresses from the dictionary definition of furniture. However, I believe the draftsmen of this award had a far wider



MR EDWARDS: interpretation of the term  
`furniture` than that given by the  
dictionary and I say that by  
referring again to the words in  
clause 33 where they've expanded the  
term `furniture` to say:

"... (including built-in  
furniture)"

PRESIDENT: What about item 4? Doesn't that take  
it still further? That's in 33, Mr  
...

MR EDWARDS: I was going to come to item 4.

PRESIDENT: You will be addressing me on that?

MR EDWARDS: I did intend to.

PRESIDENT: Yes.

MR EDWARDS: Because I believe it does support my  
argument.

PRESIDENT: Yes, so do I.

MR EDWARDS: Thank you, Mr President.

There is, in our opinion, no  
difference between the two  
illustrations. The illustration that  
I have given of a wardrobe and the  
articles we observed during  
inspections being made by Challenge  
Kitchens, namely kitchen cabinets  
which are taken to the house of the  
client, assembled and screwed to the  
wall. There is, in our opinion, no  
difference.

And yet, I don't believe there would  
be any argument if the items we were  
considering were wardrobes rather  
than kitchen cabinets.

I did think to use a dictionary  
definition in assisting to define the  
term `furniture`. However, as I've  
said, all the dictionaries that were  
at my disposal referred to a free-  
standing article.

Clearly, in our opinion, the  
draftsman intended to give the term

MR EDWARDS:

`furniture` a far wider meaning than those that could be found in the dictionary by using the terms including built-in furniture. And as such, I submit, the dictionary definitions are not helpful.

I have therefore resorted to giving the term `furniture` that connotation which is clearly given and understood by persons generally. And there can be no doubt that kitchen cabinets, in the form manufactured by Challenge Kitchens clearly fit that definition, as I believe they are the epitomy of that definition. They are articles of furniture which are capable of being free-standing; in most instances they are not, but they can be free-standing if the client so desires.

In addition to giving the term `furniture` its commonly understood meaning, that is - tables, chairs et cetera - free-standing articles, it must be read in conjunction with the reference to built-in furniture. And it is our submission that the articles we saw being manufactured during inspections clearly fit the term `furniture`, as used in clause 2, `Scope`, and augmented by clause 33, `Scope` of the Furnishing Trades Award.

In my opinion, an article manufactured as joinery to not fall within the scope of the Furniture Trades Award would be, in my submission, required to form part of the building itself and not be an article that can be either added later, or an article which is available to be moved at any given time, as is the case with the articles manufactured by Challenge Kitchens.

PRESIDENT:

Such as door and window frames.

MR EDWARDS:

Door and window frames, in our submission are joinery. They form part of the overall context of the building and they're not articles

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MR EDWARDS:

that can be taken by the client should they decide to move from the premises. I guess they always could be, but it would be most unusual to see a person removing all the doors when they moved out of the house. They could, however, take a custom-built kitchen with them.

You have referred to sub-clause 33.4. and I intend to deal with that now. And it reads:

"Any person employed in wholly or partly preparing or manufacturing furniture timbers cut to size, veneers, veneered panels, plywood, or corewood."

And I believe the inspections carried out the other day clearly demonstrate that the persons employed by Challenge Kitchens are 'employed in wholly or partly preparing or manufacturing furniture timbers cut to size', as Mr Lockhart said during his evidence (sworn evidence), the use of 'veneers, veneered panels, plywood,' (I don't know that they use plywood) 'or corewood.' And in addition, there are a number of other articles they do use these days, which were probably not envisaged at the time this award was structured.

PRESIDENT:

It would probably be covered, I imagine, by the generic term 'corewood', would it?

MR EDWARDS:

I believe it probably would. Except that one of the items used by Challenge Kitchens, which we observed during inspections, was not even wood. It was a reconstituted paper, I believe it was, which may or may not be corewood. However, I believe that's an addition to '4' that may need to be made at a later time, if necessary.

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MR EDWARDS:

Nevertheless I believe section 33(4) does refer to, in quite some detail, the business of this employer.

I would like to contrast that if I may with the Building Trades Award. The Department of Labour and Industry appear to have concluded that Section VI of the Building Trades Award applies to Challenge Kitchens. And I say Section VI because that is the section of the Building Trades Award which deals with weekly hire. Had they concluded that Section I applies or that a day's pay in lieu of notice were relevant, then I would have suspected that they were using Section I.

Presumably therefore the Department of Labour and Industry believe that the scope clause of the Building Trades Award will fit the business of the employer. That scope clause reads:

"Established in respect of the following trades:-"

As is appropriate I think only (f) would apply, which is 'manufacturing joinery'.

The only classification included in Section VI of the Building Trades Award which would be seen to have any application would be the carpenter/joinery classification which is defined in clause 1 'Definitions' of the Building Trades Award as:

"'Carpenter or joiner' means an employee engaged in mixed industry upon maintenance, construction or shop work as those terms are defined in this clause."

There cannot in our submission be any contention that Challenge Kitchens could be interpreted as being engaged in a mixed industry and in our submission that definition cannot apply to the work of Mr Clark that

MR EDWARDS:

was performed for Challenge Kitchens. 'Mixed industry' as that term is generally understood would be an employer for example engaged in the retail trade who employed a carpenter. That was certainly the intent of the award maker in the Building Trades Award because I had some part to play in drafting that particular definition and I recall at the time the intention of the parties was to provide a provision in the award which dealt with people that were required to use that award under the general application provisions of the Industrial Relations Act.

I think the example was given on transcript at the time before the then Assistant Deputy Chairman, Mr Holden, that a textile factory for example employing a carpenter or joiner - and that is the history of the term 'mixed industry' that is used in the Building Trades Award.

It is our submission that Mr Lockhart is not engaged in mixed industry. He is engaged very clearly in the furnishing trade industry and as such we believe the definition of 'carpenter or joiner' used in the Building Trades Award cannot have application.

That then leaves us to determine if the Department of Labour and Industry's contention is correct as to which classification Mr Clark could have been employed under.

PRESIDENT:

Certainly none in Section VI.

MR EDWARDS:

You have saved me the trouble of turning it up, Mr President, because that was going to be my next statement, 'Certainly none in Section VI'. Consequently I believe the interpretation of the Department of Labour and Industry that the Building Trades Award applies, whilst not yet considering the scope in detail, I would say there is no classification in that award that could apply even if there is scope within the award

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PRESIDENT - EDWARDS

MR EDWARDS:

for the covering of this type of work.

The term used in the scope clause of the Building Trades Award, 'manufacturing joinery' may seem at face value to perhaps cater for the type of work in question. However, I believe that portion of the scope clause should be read in the context of the award as a whole or using the doctrine of generous construction, if you like, as being applicable to the building industry and should therefore be read as 'manufacturing joinery as part of the building industry'.

Frankly I am not sure precisely how the scope clause in the Building Trades Award is to be read as a definitional statement of an employer's industry as it seems to fail to address in any way the industry of the employer. In saying that I am cognizant that the Industrial Relations Act takes a fairly wide view of the term 'industry' and does include trades, calling, processes of work, et cetera. Nevertheless I must say to the Commission that ...

PRESIDENT:

But it is 'engaged in by a private employer'.

MR EDWARDS:

I find it hard to see a private employer engaged in painting, paper hanging or glazing. He may run a business that engages in painting, paper hanging or glazing, but I don't think that is the trade carried on by a private employer and as such I believe the scope clause of the Building Trades Award is defective in any case. But that is not a matter for this hearing to determine.

I could indicate that the parties to that award are in the process of addressing that question and have been for some time because it is quite a vexed question, as you would understand, knowing some of the history of demarcation in the

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PRESIDENT - EDWARDS

MR EDWARDS:

building industry which is causing considerable concern to some parties.

We say that Challenge Kitchens is not engaged in manufacturing joinery as part of the building trade but rather furniture manufacturing as part of the furnishing trade. I believe support for our contention is found in a number of places in the Furnishing Trades Award. I have already referred to two of those, that is the scope clause, and section 33, 'Scope of Division A'.

I believe some additional support can be gained from the new clause in the award, clause 9A, 'Apprenticeships', which deals with compulsory apprenticeship trades indicating that if juniors are to be employed doing any of the work mentioned in clause 9A, they are to be indentured.

I refer specifically to sub-clause (b)(i) where it refers to the trades used in the manufacture of furniture. It talks of:

"Cabinet making..."

which I believe very clearly covers the work done by the employees at Challenge Kitchens;

"... polishing, upholstering, machining - "

There is also no doubt in my mind that there is machining done at Challenge Kitchens. And it talks about:

"... instruction and practice in four of the following machines: shaper, router, moulder, band saw, dovetailer, buzzer, planer, glue jointer, tenoner, copying lathe, automatic lathe."

In his evidence Mr Lockhart referred to some of the machinery used by his employees. I seem to have lost it.

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EDWARDS

MR EDWARDS: Bear with me for just one moment, Mr President. Pieces of paper flying around here - I've got lost. Mr Lockhart referred to a bandsaw, a thicknesser, a buzzer, edge banders. They are the only ones I jotted down at the time. But they are all machines that come within sub-clause (b)(i) which is an apprenticeship trade applicable to the manufacture of furniture.

PRESIDENT: Is that in Part I or Part II of the award?

MR EDWARDS: It is a new clause. The award has been put into the new format of the Commission.

PRESIDENT: Yes. What is the clause number?

MR EDWARDS: It is 9A. It is found in No. 3 of 1986.

PRESIDENT: Oh yes, thank you.

MR EDWARDS: ... a print of the Commission. It is a very new provision which was inserted recently by Mr Gill in conjunction with our Mr Abey.

PRESIDENT: Yes, I have it now, thank you.

MR EDWARDS: I am referring to sub-clause (b)(i).

Mr President, we believe that the Furnishing Trades Award very clearly covers the business of the employer. However, I believe it appropriate to make a couple of observations in respect of the determination seemingly carried out by the Department of Labour and Industry where they have sought to utilize the provisions of section 53 of the Industrial Relations Act to take a prosecution against Challenge Kitchens.

You have already read into the transcript the principal portions of section 53 and I think you have likewise drawn the conclusion, or made the observation in any case, that it firstly requires an employee



MR EDWARDS:

to perform two or more classes of work. Now we have heard from Mr Lockhart this morning in sworn evidence that there were not two or more classes of work performed by Mr Clark in his employment with Challenge Kitchens on that one day in question. He was required to do a simple rotational task of putting on edge strips and putting on back flashings. As such I don't believe section 53 can have any application.

I believe it is possible for one to conclude that perhaps two awards could apply to this work. In saying that we would have to say that the term `manufacturing joinery` does go close to describing the employer's business. But I again say that that must be read in the context of the Building Trades Award as a whole and that is it must be in conjunction with the building industry.

There is no doubt in our mind that it is possible however to still draw the conclusion that `manufacturing joinery` does cover this type of work. But notwithstanding that, the employee concerned did not perform two or more classes of work; he only performed one class of work and I intend to demonstrate that that work was covered by the provisions of the Furnishing Trades Award.

If I can refer the Commission to the wage rates section of the Furnishing Trades Award which is of course clause number 8. I would say that notwithstanding the sworn evidence of Mr Lockhart this morning, that his real intention in employing Mr Clark was to employ him as a cabinet maker, which would have given him the flexibility to use him across a number of classifications.

However, I would submit that the work done by Mr Clark on the day in question, which surely must be the determinate factor, falls within Grade C, and I refer to page 11 of

MR EDWARDS:

the award which defines the various classifications of work within the gradings. It talks of an:

"Assembler 2nd class, i.e. an adult employee other than a utility worker engaged in assembling component parts of furniture cabinets or camping furniture"

and a 'utility worker' is one that falls within Grade D and is defined in the definitions of the award as being:

"... an employee engaged -

(i) On repetition work on any automatic, semi-automatic or single purpose machine or any machine fitted with jigs, gauges or other tools rendering operations mechanical and in connection with which he is not responsible for the setting up of the machine nor for the dimensions of the products other than by checking with gauges which shall be either unadjustable or, if adjustable, shall not be set by the operator, or

(ii) in the assembling of component parts of appliances or articles to which this award applies and in which no fitting or adjustment whatever is required ..."

The reason I say it is the 2nd class assembler classification in this case is that there seems to have been some adjustment required to be done by Mr Clark.

MR EDWARDS:

And it goes on to say:

"(iii) in specialised processes not requiring the use of hand tools except stapling machines, hammers, pliers, screw drivers, spanners or files;

(iv) on any other operations other than those coming within the classifications appearing in the table in Clause 35 - Shift Work."

Now, I would say very clearly that except for that one small item in relating to possible adjustment of the component parts being fitted, Mr Clark was indeed employed as a utility worker on the day in question, but because some small adjustment was necessary, I think it would be fair to say that Grade C Furniture Maker would in fact have applied to the work in question on that day.

Had it not, had Mr Clark been employed on other operations within the employer's premises on that day, I have no doubt that a Grade A Furniture Maker would have been the appropriate classification because it deals with persons using the types of machines that have been described to us this morning by Mr Lockhart in his sworn evidence.

I have already commented, or in fact I was pre-empted from commenting, that in my submission there is no classification in the Building Trades Award which would cover this work, and I say that because of the use of the words 'mixed industry' in the definition of carpenter and joiner and as such, in my opinion, there can be no classification in Section VI of the Building Trades Award which could cover the work in question.

That section covers a variety of classifications which are joiner and/or machinist, carpenter,

MR EDWARDS:

bricklayer, stonemason, plasterer, painter decorator, paper hanger, glazier, roof tiler and slater, shop fitter, floor sander, boiler maker and/or structural steel tradesman, fibrous plastercaster, signwriter marker or setter out, special class tradesman. That is in Division A. In Division B it talks of plumbers.

PRESIDENT:

Well, they are all tradesmen, aren't they?

MR EDWARDS:

They are all tradesman classifications. I don't believe the work in question is the work of a tradesman. It is in fact work of a far lower standard than would have been expected of a tradesman and in fact it turns out that Mr Clark was not even capable of performing those functions in a satisfactory manner, and that is not a matter of contest, as we understand it.

That was accepted by Mr Clark that his work performance was way below that reasonably expected of a person in his classification, particularly seeing as Mr Clark did hold the qualification of a carpenter or joiner. I am not sure whether he is a joiner or a carpenter or both, but most certainly he did hold that qualification, having completed an apprenticeship. However, he does not appear to have been a tradesman of very high standard, if he couldn't even do work that is not of a trade standard.

I note that Mr Dowd has put in an exhibit which is an extract from the 'Hobart District Yellow Pages' printed by Telecom. At the top of the page there is a symbol there which means copyright to Telecom Australia. I am not sure that Mr Dowd sought the permission of Telecom to reproduce this particular document.

PRESIDENT:

Now, then.

MR DOWD:

Are you going to put me in?

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PRESIDENT - DOWD - EDWARDS

MR EDWARDS:

But, nevertheless, we will let that go through to the keeper because it doesn't in my opinion do any harm whatever to the arguments that we have put forward.

It does talk about design, manufacture, renovation and installation but it doesn't say the installation is done by Challenge Kitchens. In fact Mr Lockhart has already told us that he arranges installation for clients when requested to, through subcontractors who may or may not be engaged in the building industry. That would be a matter to be determined in respect of any particular case.

Mr President, on the terms used in the awards, and using the generally accepted definition of 'furniture', I believe there can be no contest that the Furnishing Trades Award had application to the employment of Mr Clark.

I would like to refer to clause 13 of the Furnishing Trades Award. Clause 13 is 'CONTRACT OF EMPLOYMENT'. I specifically refer to sub-clause (d).

PRESIDENT:

That is in Part II, is it?

MR EDWARDS:

Well, again, Mr Commissioner, it is not an award divided into parts. The Furnishing Trades Award is one that is now in the Commission format. Certainly I think if you look at my application it may be worded as being in two parts, but Mr Commissioner Gozzi appears to have snuck through a consolidation on me in the interim period.

PRESIDENT:

Yes, I have it, thank you.

MR EDWARDS:

I refer to sub-clause (d) of clause 13 which says:

"Employment for the first week of service at any time shall be from hour to hour at the weekly rate prescribed by this award."

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PRESIDENT - EDWARDS

MR EDWARDS:

We would therefore conclude from that, that the employment of Mr Clark was terminable by the giving of an hour's notice because it is from hour to hour, and not by the giving of a week's notice as would have been required under the provisions of the Building Trades Award, and specifically under clause 3 of the Building Trades Award which says:

"3. TERMINATION OF EMPLOYMENT

(a) One week's notice of the termination of the employment engagement shall be given on either side or one week's pay shall be paid or forfeited in lieu thereof."

PRESIDENT:

That would be clause 3 of Section VI, of course.

MR EDWARDS:

Section VI, yes, it is, Mr President. It goes on to deal with several other matters including the right of the employer to dismiss for misconduct or refusal of duty.

It seems that the Department of Labour and Industry, in concluding that section 53 has some application to the employment of Mr Clark, have determined that that clause of the Building Trades Award has some application and have sought to take before the magistrates' court a prosecution alleging breach of award against Challenge Kitchens.

Of course it is that reason that has brought us before this tribunal, because I believe this matter to be more appropriately to be dealt with under the interpretative functions of the Industrial Relations Act without the incurrence of unnecessary costs and legal expenses which would come from going through the legal processes of the magistrates' court.

We say that the employment was properly terminated in accordance with sub-clause (d) of clause 13,

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PRESIDENT - EDWARDS

MR EDWARDS:

'CONTRACT OF EMPLOYMENT', and in the case in question, in this particular interpretation, that the employer has acted in accordance with the award which governed the employment of Mr Clark on 28 October 1985.

What we seek from you, Mr President, is a decision or a declaration (I'm not sure which at the moment, perhaps a declaration, I would suspect) that as at 28 October 1985 the award of the Furnishing Trades Award applied to the employment of Mr Gary John Clark by Challenge Proprietary Limited at their premises known as Challenge Kitchens at 46 Grove Road, Glenorchy.

We would seek therefore, obviously, a retrospective declaration because the employment only lasted 1 day and that was the day in question.

It's most unusual for me to be arguing for retrospective adjustment of anything, nevertheless, I do on this occasion.

If it please the Commission.

PRESIDENT:

Yes. Thank you, Mr Edwards.

Now have we got any batsmen from the other side?

Mr Dowd?

MR DOWD:

It looks as though I'm here on my own today, Mr President.

In opening, Mr President, I support the belief that the Department of Labour and Industry determining the Building Trades Award being the appropriate award for employees at Challenge Kitchens.

Mr Edwards has mentioned the scope of the Building Trades and once again I draw your attention to the scope. It is established in respect of the following trades (I put emphasis on the 'trades' - it is not established for the company, it's established for

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PRESIDENT - EDWARDS - DOWD

MR DOWD: the trades in which people work) and we look at sub-clause (f), `manufacturing joinery`.

Without going into any great depths regarding the terminology of manufacturing, I think it would be of more benefit if we looked at what joinery is seen to be.

I've taken the liberty to copy from various dictionaries and I think if we deal with the `Macquarie` firstly.

PRESIDENT: While you're distributing that exhibit, Mr Dowd, will you address me on the definition of `industry` in the Industrial Relations Act please, because it does specifically refer to `trade` as being `a trade engaged in by a private employer`, not the trade of the employee.

MR DOWD: Well I think it's ...

PRESIDENT: At your convenience.

MR DOWD: ... possibly an anomaly which currently exists with the award, because the award (the Building Trades) has been established in the following trades, and that is a terminology which is there currently as it exists ...

PRESIDENT: Yes, but ...

MR DOWD: ...and maybe it has to be rectified in the future.

PRESIDENT: But the law is the law, Mr Dowd, isn't it? That award is presumed to have been made in accordance with the provisions of this Act - that's under the transitional provisions.

This Act says that awards in the private sector can only be made covering the industry of the employer except in circumstances where the President pursuant to section 34 of the Act gives his approval or makes a declaration (if you wish) that an occupational award as such may be made.



PRESIDENT: It's something that I'm not the architect of, Mr Dowd, but that's the way the law stands at the moment.

MR DOWD: Well, as I say, I believe it's just an anomaly that currently does exist in the Building Trades and possibly if that is to be rectified at a later time to conform with the Act.

PRESIDENT: Yes. Well it's a presumption made that the award is in fact in accordance with the Act and I would have to conclude, I imagine, that it's the trade of the employer.

MR DOWD: I hear what you say.

PRESIDENT: Yes, yes. As I say, I didn't write the Act, Mr Dowd, and the fact that the Commission inherited these Industrial Board awards, cast in those terms, has created a number of problems and I suspect will continue to create problems until such time as some necessary drafting alterations are effected.

MR DOWD: It would appear that this is one of the problems.

PRESIDENT: Yes. You should see the Hospitals Award, Mr Dowd.

MR DOWD: I think we've got enough problems ...

PRESIDENT: Yes.

MR DOWD: ... here at the moment.

MR DOWD:

In regards to joinery, it is in the left-hand column. I apologize for the copy, but if you look down the left-hand column:

"1. the art or trade of a joiner. 2. a" (something)  
"work or his product."

Then if we look at what a joiner definition is:

"1. one who or that which joins. 2. a craftsman who works in wood already cut and shaped; a tradesman in wood who constructs the fittings of a house, furniture etc."

So I just draw your attention to that classification or terminology of `joiner` and `joinery`.

Further I have a ...

PRESIDENT:

That was Exhibit D.2, by the way.

MR DOWD:

... a Concise Oxford Dictionary, if we could also look at that.

PRESIDENT:

D.3.

MR DOWD:

On page 542:

"joiner ... one who makes furniture, house fittings, and other woodwork that is lighter than carpenter's ..."

PRESIDENT:

I don't have 542, I have 553 and 541.

MR DOWD:

Sorry, 541.

PRESIDENT:

D.4.

MR DOWD:

On page 651, left-hand column towards the bottom:

"joiner. a person whose occupation is to construct articles by joining pieces of wood ..."

PRESIDENT:

Just bear with me if you will. This is a bad copy. How far down?

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PRESIDENT - DOWD

MR DOWD: Towards the bottom. There's a cross in the column opposite.

PRESIDENT: Right, 'one that joins.' One 'whose occupation is to construct articles by joining pieces of wood.' Yes.

MR DOWD: And:

"joinery. 1: the art or trade of a joiner. 2: work of a joiner."

PRESIDENT: You've been busy Mr Dowd.

Exhibit D.5.

MR DOWD: This is from the Collins Dictionary of the English Language. And I take you to page 788:

"joiner. 1. a person trained and skilled in making finished woodwork, such as windows, doors, and stairs."

And I put emphasis on 'such as'. It's not just restricted to those articles. They are items which would be applicable.

"joinery. 1. the skill or craft of a joiner. 2. work made by a joiner."

So it is my belief that they are the duties of a joiner in that particular classification.

In regards to the work which is being undertaken by Challenge Kitchens, and I put emphasis on the word 'kitchens', I draw the Commission's attention to the fact that a kitchen is basically a room in a house where food is prepared for consumption. It is a common practice that kitchen cupboards are securely fixed to the walls, floors and even ceilings. Unlike furniture it is not an article to be moved and it would be on very, very odd occasions where you would see a house being sold and the kitchen cupboards removed because of some particular like for those

MR DOWD:

cupboards as indicated by Mr Edwards earlier this morning.

I would see `furniture` as being removable articles; articles which you could have in the one room or you could take to another room within the home.

In fact, with the submissions which have already been put forward, I draw your attention to the fact that I've also underlined `kitchens`. I don't intend to go through them one by one.

PRESIDENT:

No, I had noticed that.

MR DOWD:

But, at a later time, people could see what the terminology of `kitchen` is.

I would see `kitchen cupboards` being completely different to `cabinets`. I would see `cupboards` as being fixed into a building and form part of that building.

In regards to the definitions, I take the Commission to the Building Trades Industrial Award, Section VI - `Weekly Hire, Maintenance and Workshops`:

"1. DEFINITIONS

For the purpose of this section -

(a) `Carpenter or joiner` means an employee engaged in mixed industry upon maintenance, construction or shop work as those terms are defined in this clause."

I have a different interpretation of the award to Mr Edwards. I believe that `mixed industry` doesn't just stand alone as he has emphasized. I believe that there are various areas, one being mixed industry; one being maintenance, construction, or workshop, being separate areas of work.

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PRESIDENT - DOWD

MR DOWD: I do that because, if one considers the award, where would joiners, where there is no dispute in the matter here today, but any other joiner's shop - what section of the award would he fall under if he was to be excluded from here as Mr Edwards has said?

I take you further down to 'Shop Work', sub-clause (c).

PRESIDENT: Where are you reading this from?

MR DOWD: The Building Trades Industrial Award.

PRESIDENT: Yes, what part of it? Is that Section I or ...?

MR DOWD: Section VI, 'Weekly Hire, Maintenance and Workshops'.

PRESIDENT: Yes, the Conditions or ...?

MR DOWD: The Consolidated, page 132.

PRESIDENT: Thank you.

My index says it's page 30 something and I just can't find it. It's 132. Now I'm with you, thank you.

MR DOWD: "'Shop work' means any carpentry or joinery work performed by a carpenter or joiner in a workshop not located on an 'on site' building project."

It is my belief that the work undertaken by Challenge Kitchens, would fall under that particular definition, as it would be joinery work performed in a workshop.

And once again, I reiterate, if that is not applicable for joinery shops where, in this award, is it covered for the joinery shops? Where is it determined? And that's what I say - joinery shops is contained in that particular area.

PRESIDENT: Wouldn't one of the tests to be applied in the circumstances that you

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PRESIDENT - DOWD

PRESIDENT:

describe be the chief and principal purposes of the employer? I bring you back again to the definition of 'industry' under the Industrial Relations Act, and it is from that Act that this Commission derives its jurisdiction - not from the award.

I would have thought, Mr Dowd, that if one were struggling to determine whether an employer's business fell within the parameters of one award or another, one of the tests to be applied at least would be to consider the chief and principal purposes of that employer's business.

In the instant case, it seems to me (and we've all been out and viewed it) that he's concerned with the prefabrication and assembly of pre-cut furniture.

MR DOWD:

Well, much emphasis is placed on the prefabrication and, as you say, furniture. But it is my belief that that is what is to be determined - whether it is furniture or joinery. And in this day and age, much work is prefabricated. If we are to look at the bench in front of us, it's been prefabricated into four sections. It is a common practice.

PRESIDENT:

Let's assume for the purposes of argument that Challenge Kitchens also made a few window frames to order using existing labour. Would you, in those circumstances, maintain that both awards could, in those circumstances, apply to an individual employed by that company?

MR DOWD:

Mr President, I'm not saying that the Furnishing Trades is the applicable award. I haven't said that at all.

PRESIDENT:

Well then, if you haven't said that, presumably you are saying or maintaining that it's the Building Trades Award that ought to apply to all employees out there.

MR DOWD:

Yes.

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PRESIDENT - DOWD

PRESIDENT:

Wouldn't you have some difficulty  
establishing that?

MR DOWD:

I don't believe so.

PRESIDENT: I see. But there's been no dispute with your organization at this stage.

MR DOWD: No. It's been a notification by the Chamber involving two awards and we were notified accordingly, pursuant to the Act.

PRESIDENT: Quite so, but I'm picking up your point, that it's your belief that the Building Trades Award applies, but presumably you either have no members out there or you are not unhappy with the wage rates that are being applied anyway.

MR DOWD: Well, I wouldn't know if there is any members of any organization in that particular workshop.

PRESIDENT: I see. It's one of those situations, is it?

MR DOWD: I'm not aware if they are in a union or not. Maybe Mr Gill could put a light on that.

Another exhibit I wish to put forward and that is from the Australian Taxation Commission and it deals with tax which is applicable to various items of furniture, joinery or whatever.

PRESIDENT: This will be Exhibit D.6.

MR DOWD: Having enquired at the Taxation Department as to the tax applicable for various items in the construction industry, I have been informed of the various tax schedules which are applicable to the various items.

I'll take you to the second-last paragraph on the first page:

"Exemption from sales tax is at present applicable to an extensive range of goods in the general classification of building materials which, in the main, form an integral part of the final structure. This exemption extends to certain classes of goods



MR DOWD:

manufactured by you which would be within the scope of items 84 and 90 of the First Schedule to the Sales Tax (Exemptions ..."

If we are to turn to the second page - once again, underlined:

"It is important to note that exemption under Item 90 is applicable only to joinery of a kind which is wrought into or attached to, so as to form part of, buildings or other fixtures".

If we are to go down to (f):

"cupboards of the kind usually built into houses - exempt," (from tax) "even though in some instances they may not actually be affixed to the building, e.g. sink cupboard, kitchen cupboard units, wardrobes, linen presses, generally being without backs or constructed to fit specifically designed spaces;"

As we have seen during the inspections, the units which have been manufactured by Challenge Kitchens have been manufactured to fit specific areas and they have been fixed to walls, floors or whatever.

In conclusion, Mr President, I just support the belief of the Department of Labour and Industry that the appropriate award should be the Building Trades Industrial Award, and request that you give due consideration to the matter.

PRESIDENT:

Thank you, Mr Dowd, for those submissions.

Yes, Mr Gill.

MR GILL:

Mr President, the Federated Furnishing Trades Society of Australasia, Tasmanian Branch, wishes

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PRESIDENT - DOWD - GILL

MR GILL: to support the submissions and the evidence given by Mr Edwards from the Tasmanian Chamber of Industries in this matter.

PRESIDENT: Yes. Mr Gill, do you have members employed by Challenge Kitchens?

MR GILL: No, we don't. The Furnishing Trades Union doesn't have any members.

PRESIDENT: I see. But you are of the opinion, nonetheless, that that is work in respect of which persons could be enrolled into your organization.

MR GILL: Yes, we are.

PRESIDENT: Yes. Thank you, Mr Gill. Mr Edwards?

MR EDWARDS: Thank you, Mr President.

Just furthering Mr Gill's answer to your question in respect of union membership. It's fair to say that a log of claims has been served by the Federated Furnishing Trades Society, one of the items of which is union membership.

So, I guess that's a matter that will be addressed in future.

I have read with some interest the document provided by the Deputy Commissioner of Taxation and identified as Exhibit D.6.

He talks about goods manufactured by 'you' - I don't know who 'you' is. Mr Dowd didn't seek to illuminate us on that particular subject. I don't know whether it was to a builder, a furniture maker, a joiner, a trade union - which doesn't make goods at all. I'm at a loss to explain precisely what it is.

But what it does seem to say is that there is a sales tax leviable on furniture that doesn't form an integral part of the building and I think that is fairly line ball with the types of submissions that I've

MR EDWARDS:

made this morning.

That's the differential I would draw between joinery and furniture making and on page 2 of the document, under sub-clause (f) that was quoted by Mr Dowd, I'd go to (g) which says:

"cupboards such as wardrobes, kitchen cabinets, etc which are normally sold as free standing furniture - taxable" (therefore furniture) "even though they may be nailed or screwed to the building in some cases for convenience;"

That's precisely what I've said to you this morning, Mr President - that they are furniture. The Deputy Commissioner of Taxation appears to be saying they are furniture because they don't form an integral part of the building. If they were, they'd be sales tax free.

PRESIDENT:

He also said under (c).

MR EDWARDS:

I was going back to (c).

PRESIDENT:

The final paragraph?

MR EDWARDS:

Yes. I was going to read on from after where Mr Dowd had underlined, and I've marked it here, and Mr Dowd went as far as the terms 'buildings or fixtures':

"Exemption under this item is not extended to joinery that is not of the kind which is normally 'built in', even though in particular instances the article may be fastened by screws, brackets, nails etc to the building. This means that the mere attachment of an item of furniture to a building is not the decisive factor as to whether or not exemption is applicable."

I mean, that's dealing with sales tax and I don't see a lot turns on it

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PRESIDENT - EDWARDS

MR EDWARDS:

but, nevertheless, it seems that the Deputy Commissioner of Taxation is identifying in (g) that kitchen cabinets, although nailed or screwed to the building, is furniture and is not sales tax free and that supports in its entirety what I've had to say this morning.

In respect to Mr Dowd's submissions in respect of the definitions contained on 132 of the Building Trades Award, I'm sure Robin Hood would have been delighted to have had as long a bow as Mr Dowd tried to draw this morning. He may still be with us today.

PRESIDENT:

I thought he was.

MR EDWARDS:

He is certainly drawing a very long bow.

Sub-clause (a) of the `DEFINITIONS` clause in the `WEEKLY HIRE` section of the Building Trades Award says:

"`Carpenter or joiner` means an employee engaged in mixed industry upon maintenance, construction or shop work ..."

Mr Dowd seemed to think that you could divorce the term `mixed industry` from those that followed and say it means an employee engaged upon maintenance, or means an employee engaged upon construction, or in his case, it means an employee engaged upon shop work and went on to quote shop work and in support of that, tendered a number of documents which are extracts from various dictionaries.

What he didn't address, or failed to address, or failed to understand, is that they have firstly to be employed in mixed industry. I certainly understand the point he's making : Where does that leave a joinery shop? In limbo perhaps - perhaps award free, I don't know. That's not

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PRESIDENT - EDWARDS

MR EDWARDS:

the purpose of this hearing today to determine that question.

What we are here to determine is whether the articles manufactured by Challenge Kitchens are furniture, and whether or not the Furnishing Trades Award or the Building Trades Award applies to that manufacturer.

What is clear, in my submission, is that the term `mixed industry` does not apply to the business of the employer in question, and therefore the rest of Section VI becomes meaningless because you must firstly be engaged in mixed industry and then you must be engaged upon either maintenance, construction, or shop work, as those terms are defined.

And certainly, I don't think the methodology used by Mr Dowd in determining that the work in question was shop work is appropriate, because he excluded to firstly categorize the business as a `mixed industry` business.

PRESIDENT:

The Commonwealth Industrial Court, as it then was, interpreted the Carpenters and Joiners Award many years ago on this very issue, in relation to the Hydro-Electric Commission, and I would commend that interpretation to you.

MR EDWARDS:

I wasn't aware of that. I imagine the appearances would have been quite interesting.

MR EDWARDS:

Mr President, there are very few other items I'd like to touch on that Mr Dowd did submit to you. One is, though, his answer to your question in respect of how the scope clause in the Building Trades should be read. And I think your subsequent questioning puts beyond any question that it must be related to a private employer, and that is brought of course from the Industrial Relations Act. And again, in that sense, I believe Mr Dowd has failed to really address the question. The question is: Is this employer engaged in that industry, or in that trade?

And again, I get a bit lost when I get into this area with the Building Trades Award scope. To my mind it's totally meaningless within the meaning of the Industrial Relations Act. Nevertheless, I don't believe it could possibly apply in this instance anyway, because the private employer is not engaged in the trade function or calling of manufacturing joinery.

Mr Dowd then sought to inform us that a kitchen is a room in a house used for the preparation of food for consumption.

PRESIDENT:

You wouldn't quarrel with that, would you?

MR EDWARDS:

No, certainly not.

MR DOWD:

Good.

MR EDWARDS:

I agree wholeheartedly with that. Like you, I looked at the dictionary definitions that were provided. In fact I thought some of them were quite good. I note that on almost every occasion the word 'joke' was defined on the same page, as we have put forward.

Mr Dowd was talking of the practice of fitting kitchen cupboards to walls, floors and even ceilings - I have dealt with that question. Just briefly, I don't think anything

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MR EDWARDS: swings on whether or not the item is fixed to the building. I believe it swings on whether it is an integral part of the building, and we don't deny that certainly these kitchen cabinets are fixed to the walls. Whether or not they are fixed to the floors or ceilings is unknown to me.

PRESIDENT: They could also project out into the room and not be fixed at all.

MR EDWARDS: They can also be totally free-standing, and obviously therefore fit even the vaguest dictionary definition of furniture, all of which refer to free-standing.

I also note that Mr Dowd, in supporting the Department of Labour and Industry, didn't seek to support the interpretation seemingly put on section 53 of the Industrial Relations Act. Presumably, therefore, he believes the Furnishing Trades Award has no part to play in the employment of persons at Challenge Kitchens, and of course with that I vehemently disagree.

I believe it has been proved beyond any reasonable doubt that the provisions of the Furnishing Trades Award very definitely do cover the employment in question. They cover the employer in question and the 'Scope' clause. They cover the employee in question in the wage rates clause where they define the types of work to be done and, as such, I don't believe there's any real contest, if it please the Commission.

PRESIDENT: Thank you, Mr Edwards.

I will reserve my decision. That concludes this hearing.

HEARING CONCLUDED