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TRANSCRIPT OF PROCEEDINGS

O/N 1041

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER J.P. McALPINE

T No 11634 of 2004

**NATIONAL TRAINING WAGE
(TASMANIAN PRIVATE SECTOR) AWARD**

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Tasmanian Trades and Labor Council to amend and
update trainee provisions, wage rates and training
packages**

HOBART

12 NOON, TUESDAY, 10 AUGUST 2004

**This transcript was prepared from tapes recorded
by the Tasmanian Industrial Commission**

HEARING COMMENCED

[12.25pm]

PN1

MS L. FITZGERALD: I am from the Tasmanian Trades and Labor Council and with me is MR P. GRIFFIN.

PN2

MS J. THOMAS: I appear for the Tasmanian Chamber of Commerce and Industry and I do apologise for the late start but there were some final matters that needed some ironing out, so to speak.

PN3

THE COMMISSIONER: I hope they have been ironed out. Ms Fitzgerald, do you want kick off?

PN4

MS FITZGERALD: Thank you very much, I will. The application before you seeks to make some variations to the National Training Wage Award (Tasmanian Private Sector). Primarily, to address some provisions regarding school-based trainees and other variations sought have been to remove some discriminatory provisional - or remove a discriminatory provision to clarify the application of the part-time traineeship wage rate and to amend the schedule attaching to the award, which lists the training package details. And if I could, I would like to table our latest draft of changes. We have had some discussions since I made application and it has been a bit of a moving feast, so I will provide what I hope will be the latest copy. And even saying that, there are still some matters that we have been trying to resolve over the last few moments.

PN5

THE COMMISSIONER: So - sorry - we will call this A1.

EXHIBIT #A1 LATEST DRAFT OF CHANGES

PN6

MS FITZGERALD: Thank you. And before I proceed any further, just to indicate that there is one matter that we sought to address and that is clause 8E, where what we have done is attempt to track the changes, so I hope it is clear on your copy? And 8E makes some reference to an existing employee and indicates that if an existing employee becomes a trainee that their wage ought not reduce because of that, in essence. But in this particular provision, it specifies that this only relates to adult trainees, who become a trainee. Now, our intention has been to remove the word "adult" so that this provision is not discriminatory and it would not matter whether you were a junior or an adult if you are an existing employee and then you became a trainee that your wage was not reduced because of that.

PN7

Now, the TCCI have advised that at this stage they cannot consent to that. And in an attempt, I guess, to try and get agreement around this provision, I think both of

us would not seek to have this discriminatory provision but - and I don't want to argue the TCCI's case for them - but we, I guess, too want to ensure that it doesn't have any detrimental effect on junior employees who may or may not be offered a traineeship, which is desirable. So in the interests of trying to resolve this matter and come to you with a consent position, I don't proceed with this particular element today but we will come back.

PN8

THE COMMISSIONER: Okay. Now, just on that one because I had a question here. Although the person wouldn't reduce money, could it be understood then that they would be green inked until - - -

PN9

MS FITZGERALD: Green inked? It is not a familiar term for me.

PN10

THE COMMISSIONER: Sorry. That they will stay on that same rate until the - assuming the training rate actually meets that or will they be - - -

PN11

MS FITZGERALD: Yes, that is right. That their wage would - - -

PN12

THE COMMISSIONER: Will be frozen until - - -

PN13

MS FITZGERALD: Yes, until - that is right. That they wouldn't actually suffer a decrease in their wage at all. So they would be being paid the rate that they would have been paid if they were an employee and not a trainee. But presumably once they got to a stage where, you know, maybe if they were being paid a higher trainee wage, then they would be paid the appropriate wage.

PN14

THE COMMISSIONER: Yes, I suppose what I am getting at is, for example, if it happened to be a labourer and while that wage was going up, if that person became, say, for example, an apprentice, that the wage wouldn't go up with that, that that wage would stay until - - -

PN15

MS FITZGERALD: Yes.

PN16

THE COMMISSIONER: Is that correct? Is that - am I reading that properly?

PN17

MS FITZGERALD: Yes, as I would understand it, yes. What it is to do is to protect - and where it would be - I mean, I was mentioning to Jenny Thomas that I sought some clarification about the reason why it was specified adult from the ACTU because this award largely mirrors the Federal award. It will only be, I think, with the school-based trainee provisions that it departs from the Federal award but, you know, it won't be inconsistent in doing that, it is just that we have addressed these matters sooner than they have.

PN18

But when I sought from them some clarification as to why the specification of adult was there, what they said to me was when it was being contemplated that existing employees might well be offered traineeships, they were only contemplating adult employees moving across not junior employees. Now, since that time there has been, I guess, a growth in traineeships, particularly part-time, and now when we are about to move into school-based traineeships, you could envisage that there may well be juniors working in - particularly, maybe retail and hospitality - that are working there that may well undertake a part time or school-based traineeship. So it wasn't - as they said - it wasn't contemplated, so it wasn't deliberately discriminatory, it is just they didn't envisage juniors.

PN19

THE COMMISSIONER: Yes, it was being more specific. Yes, okay. So that is really the only point of contention, is it?

PN20

MS FITZGERALD: Yes, yes, that is right.

PN21

THE COMMISSIONER: Ms Thomas?

PN22

MS THOMAS: Yes, that is right. We would acknowledge, Ms Fitzgerald's submissions and we will be looking at this matter in the longer - or medium term.

PN23

THE COMMISSIONER: All right. Yes, okay. So would you like to go through
- - -

PN24

MS FITZGERALD: Like to continue to work through?

PN25

THE COMMISSIONER: Yes.

PN26

MS FITZGERALD: So the first change that we are proposing is to the definitions, which is clause 7. And on my copy - I hope on yours - it is page 4, where it says school-based trainee. And we have amended that to reflect that it is a student undertaking at least 600 hours per year of TCE study - so that is very clear - and off the job training. So that is just a more correct definition than what was there, where it actually said 600 hours of education and study. It didn't make the distinction between the TCE subjects and the off-the-job training.

PN27

THE COMMISSIONER: Okay. And just for further clarity, school-based training means a trainee who is a student?

PN28

MS FITZGERALD: Yes.

PN29

THE COMMISSIONER: So there should be an "a" in there, should there?

PN30

MS FITZGERALD: Yes.

PN31

THE COMMISSIONER: Thank you. If we are going to get it right, we may as well get it completely right.

PN32

MS FITZGERALD: We may as well, that is right. Who is a student. Yes.

PN33

THE COMMISSIONER: Okay.

PN34

MS FITZGERALD: All right. Thank you. And the next clause is - the next is clause 9.

PN35

THE COMMISSIONER: Well, just if we are going through this, I have a question on clause 8B(3).

PN36

MS FITZGERALD: Sure. 8B(3), which says:

PN37

The wage rates described in this clause do not apply to complete trade level training which is covered by the apprenticeship system.

PN38

THE COMMISSIONER: I don't understand that. Can you explain what complete trade level - - -

PN39

MS FITZGERALD: Yes, as much as I understand it and I might need some help here. What it is actually saying is that we have had - and this is historic probably - that we have had trainees in the past and what we would know as traditional apprenticeships. Now, the wage rates for apprentices are usually in - or are - in the parent award - in the relevant award that applies there is not an equivalent award like this. So it is making the distinction that these rates apply to trainees and not apprentices.

PN40

THE COMMISSIONER: As opposed to - yes, okay, thanks.

PN41

MS FITZGERALD: Although that, you know, has blurred because of the changes in the vocational education and training system.

PN42

THE COMMISSIONER: Okay. All right, so nine, did you say?

PN43

MS FITZGERALD: Clause 9, yes. Which is page 9. We have made - yes, it is clause 9B, Wage Rates. And this has been very confusing. I must admit I have

struggled over time to try and work out which particular table applies to a part-time trainee. Table A or Table B. And on looking at the Federal award, I notice that they had actually made some change to that award in August 2002 that we had not made earlier here, which what we are seeking to do is make it extremely clear which table - which wage rate applies.

PN44

And by making those changes, it will be clear that where there is training that is provided off the job, then Table A - Table 1, Wage Rates apply. And where the training is provided on the job or partly off the job, then it is Table 2 rates that apply. And there is often that mix. And the training that is provided solely - where there isn't training provided on the job, where the training is off the job, it is a higher rate of pay. It is 20 per cent. It is not discounted by the 20 per cent. When there is training on the job, the rate is discounted by 20 per cent to reflect that part of the time is spent in training on the job. And we have made some - also some other changes with that clause. So it is 9B(2).

PN45

THE COMMISSIONER: Has been removed.

PN46

MS FITZGERALD: Yes.

PN47

MS THOMAS: On page 11?

PN48

THE COMMISSIONER: Sorry, yes.

PN49

MS FITZGERALD: Yes, it is. On page 11.

PN50

THE COMMISSIONER: Yes.

PN51

MS FITZGERALD: So all we have inserted with wage rates and Table 2 apply where and removed to trainees who have left school and included approved training, which is consistent with the definition. And the next changes are at clause 11.

PN52

THE COMMISSIONER: Okay. Well, before we get to clause 11.

PN53

MS FITZGERALD: Yes.

PN54

THE COMMISSIONER: Clause 9C(1).

PN55

MS FITZGERALD: I can see you have been doing your homework.

PN56

THE COMMISSIONER: Yes.

PN57

MS FITZGERALD: 9C(1), yes.

PN58

THE COMMISSIONER: General formulae. It says:

PN59

The wage rate shall be pro rata. The full-time rate based on -

PN60

I guess, it is the variation, is it?

PN61

MS FITZGERALD: If you like, I guess, the variation in the amount of training, yes. I mean, all the change that I have done there is to remove a gap.

PN62

THE COMMISSIONER: Yes, but what I mean is we missed out the "the".

PN63

MS FITZGERALD: So - saying, we should say on "the" variation?

PN64

THE COMMISSIONER: On "the" variation.

PN65

MS FITZGERALD: Yes.

PN66

THE COMMISSIONER: Yes. Clause 11?

PN67

MS FITZGERALD: And clause 11 is on page 15. And all we have done here is remove 11B to include it in our new clause 12, which deals with school-based trainees. But we have also picked up that this clause is in fact incorrect as it stands. It says at the moment:

PN68

A trainee undertaking a school-based traineeship may with the agreement of the trainee be paid.

PN69

But it obviously should read with the agreement of the employer. So that is not corrected on our copy, but it needs to be corrected.

PN70

THE COMMISSIONER: When you transposed it to 12.

PN71

MS FITZGERALD: When we transpose it. We haven't picked it up either but now in the clause 12, which is on page 17, we can correct it. And then this is mostly the substantial change that we are seeking, which is to deal with school-

based trainees. And as we have said these are trainees who are at school, who will be in years 11 and 12 and who will along with completing their TCE subjects participate in some vocational education and training, and also some work which involves training for which they are paid. So I don't intend to - there is one omission and I am sorry this is a bit sloppy - but 12E should be - there is TCE with a very small "s" and it should say study. So the trainee's hours of employment will be such as to allow the trainee to fulfil commitment to TCE study. So unless - do you want me to walk through those provisions?

PN72

THE COMMISSIONER: Well, no, I have gone through them but if you are comfortable - if you both are comfortable that is fine.

PN73

MS FITZGERALD: That is fine. And then the only other changes are to schedule B which is to ensure that it actually reflects the available training packages, correctly named and contemporary.

PN74

THE COMMISSIONER: Yes, that is fine.

PN75

MS FITZGERALD: So I would submit that the variations that we are seeking are not inconsistent with the wage fixing principles and do indeed satisfy the public interest test.

PN76

THE COMMISSIONER: Thank you.

PN77

MS FITZGERALD: Thank you.

PN78

THE COMMISSIONER: Just as a matter of again clarity. Are you still referred to as the Trades and Labor Council or Unions Tas?

PN79

MS FITZGERALD: It is very tricky. We refer to ourselves as Unions Tasmania or Unions Tas, but we have standing under the Industrial Relations Act as the Tasmanian Trades and Labor Council, so in this circumstance, we are referred to as the Tasmanian Trades and Labor Council and are parties to awards in that name.

PN80

THE COMMISSIONER: Yes, so can I take it that all the awards will still remain as the Trades and Labor Council?

PN81

MS FITZGERALD: Tasmanian Trades and Labor Council, yes.

PN82

THE COMMISSIONER: Okay, thanks.

PN83

MS FITZGERALD: Thanks.

PN84

THE COMMISSIONER: Ms Thomas? You are still the TCCI, aren't you?

PN85

MS THOMAS: Yes, we are.

PN86

THE COMMISSIONER: Good.

PN87

MS THOMAS: Limited.

PN88

THE COMMISSIONER: Limited.

PN89

MS THOMAS: Okay. The National Training Wage (Tasmanian Private Sector) Award was established in 1995. It was an award made to provide arrangements and awards which facilitate the employment of trainees and in particular provide young people with opportunities to gain skills and relevant work experience. There is a need for this award to be periodically reviewed to ensure its relevance in relation to the ongoing evolution of our training system and the training packages that are constantly reviewed and updated for their relevance.

PN90

The TCCI in conjunction with Unions Tas or the TTLC has conducted a review of the award based on a number of recent variations to the national training wage award 2000 and has also incorporated into the exhibit that was handed up the agreed national safety net adjustment that needs to occur in this award as well. The Tasmanian award has historically mirrored the national training wage award in many respects and an acceptance of this nexus was pointed out by Commissioner Watling in matter T7174 in a decision dated 17 October. And I will just hand that up. It is always useful to have the benefit of what has gone in the past.

PN91

THE COMMISSIONER: We will just call this R1.

EXHIBIT #R1 COMMISSIONER WATLING T7174 DECISION DATED 17 OCTOBER

PN92

MS THOMAS: In the second last paragraph, Commissioner Watling points out that having considered the submissions of the parties and given that this award has a history of mirroring the national training wage award 1994, the award will be varied with the consent of the parties. So it is just an acknowledgment there that this award has historically been mirrored on the national award. However, there are some differences and especially in relation to school-based new

apprenticeships. The Federal award doesn't have similar provisions in it for school-based new apprenticeships.

PN93

Turning to the detail of the changes to the training package, titles, etcetera. Those changes as Ms Fitzgerald has outlined reflect changes to the names of existing training packages. For example, beauty is now national beauty, so those sorts of changes have been made. And there has also been the introduction of new training packages, with them being assigned to agreed wage levels. For example, business services at wage level A hasn't appeared in the award to date. Even though I think that is a widely used training package.

PN94

We did receive some correspondence in relation to the proposed changes to the training packages from the AWU. They were concerned about the scope of in particular the gas industry's utilities, manufacture of minerals products being referred to in there. However, the issue is that this is a facilitating award. The mere fact that a training package is mentioned in that schedule doesn't mean that there will be vocational pathways available under that training package, but the approval of a vocational pathway requires industry input and industry agreement, including union agreement to the industrial arrangements to apply.

PN95

So I think if there are any concerns with any of the training packages in the award then they can be overcome through other processes. I was anticipating they might appear today, but they haven't. In terms of the other amendments, I think to a large degree they do improve the readability of the award. I think for a first time user of this award some of the provisions are a little mysterious and our members have some difficulty in deciding which table in the part-time rates apply and so we struggled through that. But I think the changes do assist with improving the readability of those provisions.

PN96

In terms of the changes to the award albeit the new provisions relating to school-based new apprenticeships. To date, the award hasn't had detailed provisions relating to the industrial arrangements to apply to school-based new apprentices or trainees. To date, the uptake of this form of traineeship has been limited as it has been argued that insufficient industrial arrangements - in particular around issues of hours of work - have not been in place to facilitate the uptake of this form of traineeships.

PN97

The variation of the award to include these provisions is a significant step in facilitating the uptake of this form of traineeship. It is hoped that the provisions will provide the basis upon which industry vocational pathways will become available as opposed to what is an enterprise by enterprise approach at this stage. So it really opens up the door to vocational pathways for school-based new apprenticeships being made available in industries, which is not the case at the moment. So we are fairly pleased to be here today putting those provisions in the award and hope that with the department's assistance and with the union's assistance, we can all work to ensure that school-based new apprenticeships are a valid and real option for young people in Tasmania into the future.

PN98

In terms of operative date, I don't think that was covered. Obviously, with respect to the safety net adjustment, that would be operative from the first full pay period on or after 1 August. I think in terms of - for reasons of efficiency, we would consent to that operative date for the rest of the variations to the award as they don't change anything substantially in the award. So we would not object on this occasion to that operative date for the other variations.

PN99

And as Ms Fitzgerald outlined, the variations do not offend anything in terms of the wage fixing principles and the Industrial Relations Act, the public interest test. We acknowledge that we have held over the proposed change to subclause 8E and we will hold further discussions with Ms Fitzgerald on that matter shortly.

PN100

THE COMMISSIONER: Okay. Thank you.

PN101

MS THOMAS: If it pleases.

PN102

THE COMMISSIONER: Well, you are obviously very close. I think it would probably be appropriate that I adjourn until you come to that agreement. Are you comfortable with that?

PN103

MS FITZGERALD: Yes.

PN104

MS THOMAS: Adjourn that particular matter?

PN105

THE COMMISSIONER: Yes.

PN106

MS THOMAS: Yes, that 8E?

PN107

THE COMMISSIONER: Until you come - what we do really need though is a clean copy of - will that come from yourself?

PN108

MS FITZGERALD: Yes.

PN109

THE COMMISSIONER: Okay. So I will really just wait for you to get back to me on clause 8E.

PN110

MS THOMAS: I think the variations, especially the safety net adjustment, should - they should go through.

PN111

THE COMMISSIONER: If you are comfortable with that?

PN112

MS THOMAS: Yes. And we have agreed to look at 8E independently, so I don't think there should be a hold-up with operative date on the other matters.

PN113

THE COMMISSIONER: All right. Well, then can I partially accept it with the proviso that within - how long do you reckon?

PN114

MS FITZGERALD: What I can do this afternoon is send you in a clean copy that deletes the change to 8E and picks up those other errors.

PN115

THE COMMISSIONER: And then we could put in a variation for that.

PN116

MS FITZGERALD: And then subsequently - yes.

PN117

THE COMMISSIONER: Okay. That is fine. Okay. So well on that basis I am happy to approve this and once we get the clean copy we will take it from there. Okay. Thank you very much.

ADJOURNED INDEFINITELY

[1.00pm]

INDEX

LIST OF WITNESSES, EXHIBITS AND MFIs

EXHIBIT #A1 LATEST DRAFT OF CHANGES.....PN6

**EXHIBIT #R1 COMMISSIONER WATLING T7174 DECISION DATED
17 OCTOBER.....PN92**