

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 3313 of 1991

**IN THE MATTER OF** an application by  
the Australian Workers' Union,  
Tasmania Branch for the making of  
a new award

re Shellfish Farming Award

COMMISSIONER WATLING

Hobart, 13 November 1991  
Continued from 29/8/91

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I will take appearances first.

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

COMMISSIONER WATLING: Good, thank you.

MR G. WARN: If the commissioner pleases, WARN G, for the Transport Workers Union of Australia and we would wish to seek leave to intervene.

COMMISSIONER WATLING: Right.

MR WARN: If the commissioner pleases.

COMMISSIONER WATLING: Good, thank you.

MR W.J. FITZGERALD: If it pleases I appear on behalf of the Tasmanian Confederation of Industries, FITZGERALD W.J, and we have no objection to Mr Warn's seeking to intervene.

COMMISSIONER WATLING: Good, thank you. Right. No objection from the union for Mr Warn?

MR COOPER: No, no objection.

COMMISSIONER WATLING: No. Leave is granted. Mr Cooper?

MR COOPER: Mr Commissioner, since we last met on this matter the union and the employer groups have met formally on no less than five occasions and we have had informal discussions on a number of other occasions that have involved phone calls, et cetera.

We have at the minute - we are preparing a document we believe will represent a consent position. That document is not available at this present stage and it will be ready we hope - hopefully at about lunchtime today with respect to the Shellfish Award. The employer organisations and the union worked extremely hard last night on this document and again this morning, since the early hours. We hope to have the document ready for you later today and seek your guidance as - if we could adjourn the matter until later in the day.

COMMISSIONER WATLING: Well, that is certainly not possible. The commission has another commitment later today.

MR COOPER: Right.

COMMISSIONER WATLING: So you make up your mind whether you want it adjourned. If it is adjourned, it will be some time in December when it comes back on.

MR COOPER: Oh right.

COMMISSIONER WATLING: It is fairly simple.

MR COOPER: Yes, I was of the understanding that - yes, I understand it was the commission's feelings that we had today set aside to go through the award clause by clause.

COMMISSIONER WATLING: Yes, but one has to take a bit of a punt at how long some of these things will go -

MR COOPER: Oh right.

COMMISSIONER WATLING: - and given the fact that you told me on - or your organisation has told me on several occasions, including private conferences, that you had already reached agreement I thought it may have been a morning exercise. Now if that is not the case and you are not ready to go, well I suppose you are not ready to go. It means we will adjourn.

MR COOPER: Well, yes I can understand that - that it is unfortunate. We are about this far away. If the -

COMMISSIONER WATLING: Yes, but that is not my problem - like the notice of the hearing went out on the 10th of October. It is no secret that this hearing has been - it is over a month that you have had notice of the hearing.

MR COOPER: That is right - that is correct.

COMMISSIONER WATLING: Yes, I just - I can understand, if you are not ready to go well you are not ready to go. We will just adjourn it.

MR FITZGERALD: Commissioner, could I maybe make an alternative suggestion. Firstly I just endorse the remarks made by Mr Cooper, it has not been a completely easy exercise. There has been genuine efforts by both sides I think to get to the point where we have got a consent document and I endorse Mr Cooper's remarks that we are only a very short distance away from complete agreement. In fact only prior to coming here we did see the major breakthrough on one of the outstanding matters and that was hours of work, and that is now agreed and we in fact are intending to go back and discuss some of the other outstanding issues.

The other - the Fish Aquaculture and Marine Products Award is listed for Thursday and Friday - tomorrow. I just wonder, commissioner, whether some time could be allocated - either of those two days - to in fact slot this matter in -

COMMISSIONER WATLING: No, no.

MR FITZGERALD: - it just would be convenient to the parties. The reason why there is some difficulties from our point of view is that we are intending to address a meeting of the Aquacultural Society on Saturday where it is their annual conference and we are wanting, if we can, for the convenience of the parties I will concede, not to miss that opportunity because all those - all the members of the Aquacultural Association will be gathered together in Smithton and we are intending, if we could, to be able to put the consent document to them. As I indicated, we really are - we have made a lot of progress and we are really not very far at all away from final agreement.

COMMISSIONER WATLING: What; half an hour?

MR FITZGERALD: It would - in terms of getting a document to you which would be acceptable it would probably be a little bit longer than that, commissioner.

COMMISSIONER WATLING: Well, I think - you know - you just make up your mind whether you want to proceed now or whether we adjourn. You know, I have hundreds of things to do as well and -

MR FITZGERALD: Yes - in making those submissions, commissioner, we are not lacking in any appreciation of what your commitments are at all.

COMMISSIONER WATLING: Right. Well, either you are prepared to go or you are not. Are you prepared to go?

MR FITZGERALD: Well, we are not prepared to go now -

COMMISSIONER WATLING: Right.

MR FITZGERALD: - but we would ask you respectfully if we could seek that delay for that short time, even tomorrow, to be able to slot it in tomorrow -

COMMISSIONER WATLING: Mr Fitzgerald, no chance. Right. You either go today or we adjourn it.- that is your entitlement.

MR FITZGERALD: It is regrettable.

COMMISSIONER: That is your entitlement.

MR FITZGERALD: If I could consult with Mr Cooper may be -

COMMISSIONER WATLING: I think you had better because I will give you a date. The 10th of December it will come back on. So we will adjourn. You make up your mind what you want to do. We will adjourn, thank you.

SHORT ADJOURNMENT



COMMISSIONER WATLING: Right. Who is going to lead off? Mr Wilkinson? Mr Cooper, thank you.

MR COOPER: Mr Commissioner, if I could tender two documents.

COMMISSIONER WATLING: Thank you. We will mark this AWU.1. And the two documents are the same, are they?

MR COOPER: Yes, Mr Commissioner.

COMMISSIONER WATLING: Right. Well, that is one document - mark it AWU.1.

MR COOPER: Without going into the history of the making of this award, Mr Commissioner, it maybe an idea just to go through it with you on transcript.

COMMISSIONER WATLING: All right.

MR COOPER: Now when we get to the title, that is as has already been determined as for scope. The matters to be dealt with today are the arrangement and we must advise on transcript that this - a document does represent an agreed position. We did have some concerns with respect to arrangement, giving the commission's consistency with respect to up to eight clauses. Being as this is a new award it does not contain a supersessions and savings clause, which in fact does for the purposes of the exercise make things a little bit out of kilter and we would seek your direction there.

COMMISSIONER WATLING: Well, we will have to put one in so -

MR COOPER: Right.

COMMISSIONER WATLING: - even if it contains appropriate words to say that this is the making of a first award.

MR FITZGERALD: Yes, we - if I could add, looking at normal supersessions and savings awards, commissioner, it does not - it refers of course to pre-existing awards -

COMMISSIONER WATLING: Yes, I understand that. I am very familiar with that.

MR FITZGERALD: - and that is the reason why we were a little concerned.

COMMISSIONER WATLING: Yes. But obviously there needs to be a provision in the award because at some stage of the games I take it, unless this award is going to stay dormant for the next 10 or 20 years - but it is worth pointing out that this is the making of a first award and therefore it would be No. 1 of 1991.

MR COOPER: We would have to draw something up then and produce it for the commission, to that effect.

COMMISSIONER WATLING: Well, I think we could do that in a matter of course as we go.

MR COOPER: Right.

COMMISSIONER WATLING: But of course that will mean you will have to do something to all the cross-referencing that maybe contained therein.

MR COOPER: Yes, of course. The date of operation we would submit should be -

COMMISSIONER WATLING: It certainly supersedes the award that has been made anyway. This is No. 2 is it not?

MR COOPER: Of course. Technically yes, you are right. Yes, of course. Date of operation: we have left that out as it would be, we would submit, the date of the decision that arises out of the making of this award and then it does have a savings provision there. Parties and persons bound: shall have respect to the employers whether registered organisations or not, which is fairly standard and the Australian Workers Union. Do you need me to go through each clause and read it for the transcript or -

COMMISSIONER WATLING: Well, not necessarily. But if I go away from here and find anything in it I will just resume the hearing. Like, I am not too sure how I am supposed to find out the contents of it unless we either (a) go through it on the record or go through it off the record -

MR COOPER: Fine, okay. We go to definitions -

COMMISSIONER WATLING: - but if I take it away - and this is the first time that I have seen it - if I go away and then look at it and find there is something in it that either (a) is wrong or (b) it is not appropriate or it is in the wrong format or it is not easily understood then we will resume the hearing.

MR COOPER: Would it be appropriate then to discuss that off the record with you?

COMMISSIONER WATLING: Well, that might be. I am in your hands.

MR COOPER: Well, I would suggest that would be appropriate and given that you would have it -

MR FITZGERALD: We would certainly endorse that. I was going to suggest that anyway, commissioner, if we could go off the record.

COMMISSIONER WATLING: Right. Well we will go off the record then. Turn of the transcript, thank you.

OFF THE RECORD

COMMISSIONER WATLING: Well it is my understanding after having significant private discussions with the parties that they are happy to adjourn this matter until 2.15 on Friday afternoon; is that the position?

MR COOPER: For the record, Mr Commissioner, the AWU is happy with that position, yes.

COMMISSIONER WATLING: Mr Fitzgerald?

MR FITZGERALD: We would certainly endorse that position, commissioner.

COMMISSIONER WATLING: Right. This matter now stands adjourned till 2.15 pm on Friday the 15th. Thank you.

HEARING ADJOURNED