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**AUSCRIPT**

## **TRANSCRIPT OF PROCEEDINGS**

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O/N 116577

### **TASMANIAN INDUSTRIAL COMMISSION**

**COMMISSIONER T.J. ABEY**

**T No. 13520 of 2009**

**T No. 13521 of 2009**

**T No. 13522 of 2009**

**BUILDING TRADES AWARD**

**BUILDING AND CONSTRUCTION INDUSTRY AWARD**

**MOBILE CRANE HIRE AWARD**

**Application pursuant to section 23(2)(b) of the Industrial Relations Act 1984 by the Construction, Forestry, Mining and Energy Union, Tasmanian Branch to vary the above awards re expense Related allowances**

**HOBART**

**9.30 AM, THURSDAY, 24 SEPTEMBER 2009**

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THE COMMISSIONER: Yes, good morning. Could I take appearances, please?

MR T. BENSON: Good morning, Commissioner. Tony Benson. I appear on behalf of the CFMEU, that's the Construction, Forestry, Mining and Energy Union,

5 Tasmanian Branch.

THE COMMISSIONER: Thank you, Mr Benson.

MR D. DILGER: David Dilger for the Tasmanian Chamber of Commerce and

10 Industry.

THE COMMISSIONER: Thank you, Mr Dilger.

MR T. COOK: Tony Cook on behalf of the Civil Contractors Federation.

15

THE COMMISSIONER: Thank you, Mr Cook.

THE COMMISSIONER: Mr Benson?

20 MR BENSON: Yes, Commissioner. Good to see you again.

THE COMMISSIONER: Nice to see you, Mr Benson.

MR BENSON: As far as the union is concerned, Commissioner, all those that are  
25 necessary received copies of the applications. Unfortunately we couldn't get it to the  
Sawmillers Association wherever they are – I don't even know if they exist any  
longer. The Tasmanian Sawmillers Industrial Association - don't know who they are  
any more, I believe the commission has notified them – but as far as the union is  
concerned, Commissioner, we submit that the existing allowances, which constitute a  
30 reimbursement of expenses incurred as these applications clearly indicate, should be  
adjusted from time to time, where applicable, to reflect the relevant changes in the  
level of those expenses, these applications seek those adjustments as detailed.

These applications are accompanied with the calculation schedules and relevant CPIs  
35 data as provided to the branch by the union's national office in support of the  
applications, so we have no reason to believe that any of those calculations are  
incorrect. The applications contain the old rate, the calculations the new rate. We  
don't believe that the applications offend the public interest, Commissioner, and we  
would seek an operative date being the first full pay period on or after 1 December  
40 2009. Thank you, Commissioner.

THE COMMISSIONER: 1 December? December?

MR BENSON: Yes. The first full pay period on or after 1 December 2009,  
45 Commissioner.

THE COMMISSIONER: Thank you, Mr Benson. Mr Dilger?

MR DILGER: Commissioner. Looking in reference to deal with all matters together – I think that's the best way we deal with it – we accept the accuracy of the CFMEUs application on all matters. The increases have accurately taken into account the CPI movements over the period June 2006 to 2009; recognise that the expense related allowance – that the purpose of compensating employees for the rise in the cost of living. However, we don't accept that it's in the public interest in terms of the aggregation of all of the increases in one hit.

We also don't accept that the applicant's desire in the application to maintain nexus with the National Building Construction Industry Award is an appropriate reason for the aggregation of those allowances into one order payable at one time. The union have had at all times, since June 2006, the ability to increase those allowances and for their own reasons they have chosen not to implement them, and it's then difficult to reconcile now their submission that they need to maintain a nexus when they've had for the previous three years that ability in any event.

That gets me to my public interest considerations and I think you have to give particular circumstances to the State economy and the industry that we are dealing in – and we're dealing with, in these awards, non-constitutional corporations, so it's small partnerships, sole traders, mum-and-dad type businesses – and we submit the more appropriate way to deal with the increases would be to pay them in increments.

Now, with modern awards and the flow-in over there, we believe, given the recent decisions in the transitional provisions of those modern awards, the actual flow-in now starts on 1 July 2010 and we believe it would be appropriate to space those increments – and there's generally three – but we believe you incrementally increase those allowances so flow-in the numbers as supplied by Mr Benson and flow those over that time. So that at that point, on 1 July 2010, when the increases come on, that will avoid a series of confusions that perhaps Mr Benson was trying to avoid in this, maintaining the nexus, and we appreciate that in general terms we want to avoid confusion and maintain consistency in general, however the real issue here and why it infringes in the public interest is the detriment that it will have.

It's not a solid argument to say that the businesses would have known that the increases would have already applied, and the building and construction industry is a long-term industry where jobs are completed, not necessarily in hours, but in days, weeks, months, even years and you're submitting tenders, you're submitting jobs in a highly competitive market. And so whilst expense-related increase is not as significant as wages, it will still impact on the viability or otherwise in the business and it's unrealistic to have contemplated that those increases would have been factored in to any tender or any job costing for current projects, but you can ameliorate that by then having some flow-on effect in increments so that people can actually be aware of it.

The majority of these allowances, although expense related, and perhaps with the exception of distant work, are more of an on-going nature so they are not one-off payments they're likely to be paid during the week on an on-going basis and I

reiterate my previous issue that these would not have been factored into a business's job costing for the short term at least.

- Just some way of background - in the latest ABS - State accounts show that
- 5 Tasmanian non-housing construction is down 29 per cent and new building construction down by 21 per cent and housing construction, although not suffering as badly, but it's only due, we submit, to the first homeowners stimulus policy, even so new dwelling construction is down 5.2 per cent over the last year.
- 10 In light of also what this commission held, in terms of the State wage case where there was a recognition of the impact of the global financial crisis – however there was probably an equal recognition that the decision made way back a couple of months ago may not have taken into consideration all factors and a recovery that has occurred - still economic commentators advise that we are not out of the woods yet
- 15 and that the green shoots have kept us out of recession, but that doesn't mean that things are in glowing terms as indicated by those submissions there.

- So in general, Commissioner, we submit that the application is accurate. However, in the public interest the accuracy of those figures should not be aggregated into one amount payable on a once-off basis. Even though Mr Benson has said 1 December 20
- 20 2009, we should proportion it over that period up till 1 July 2010. If the commission pleases.

THE COMMISSIONER: In three instalments roughly you are saying?

- 25 MR DILGER: Three instalments. I think it's three instalments, Mr Benson? Three instalments; 2006-2007, 2008-2009.

MR BENSON: Yes, some of them go back further than that.

- 30 THE COMMISSIONER: Yes. Okay. I understand your submission, yes.  
Mr Cook?

MR COOK: Commissioner, I am happy to support David's comments.

- 35 THE COMMISSIONER: Yes. I have correspondence from the Transport Workers Union of Australia and I will just read it into transcript:

*Transport Workers Union of Australia, Victoria/Tasmania Branch is in receipt of hearing notice to vary the above awards on Thursday 24 September 2009. The application deals with the variation of a number of expense-related allowances some of them going back a number of years. The Victoria/Tasmania Branch of the Transport Workers Union supports the application. The union would appreciate this letter being read into transcript as no official will be in attendance on the day. If you have any questions regarding contents please contact Howard Smith of this office.*

THE COMMISSIONER: Mr Benson, the rates that you're proposing - are they the current rates in the relevant national award?

MR BENSON: They are, Commissioner.

5

THE COMMISSIONER: Right.

10 MR BENSON: I might also add, Commissioner, that there are a number of employers in this State who are already paying those rates – they are respondent to Federal laws. They are already paying those rates in this State and paying in excess of those on EBAs. The industry is actually booming out there. I don't know where some of these economic dire comments come from, but the industry is actually booming out there, and as far as the nexus is concerned that's a long-standing arrangement that the CFMEU in this State has had with this commission in relation  
15 to those Federal laws.

THE COMMISSIONER: Over the past several years has the Federal award been varied or was it frozen under WorkChoices?

20 MR BENSON: No, it's been varied.

THE COMMISSIONER: It has been varied from time to time?

25 MR BENSON: Yes. And those CPI adjustments that I've attached to the applications here, from 2002 to 2003 right through to '08-'09, indicate those adjustments that have been made.

THE COMMISSIONER: So are you putting to me it was simply an oversight that they haven't been applied.

30

MR BENSON: In Tasmania.

THE COMMISSIONER: Yes.

35 MR BENSON: Well, I don't know whether I really want to read onto transcript, but I will, of what's occurred. We have had a change of administrative staff in our office.

THE COMMISSIONER: Right.

40

MR BENSON: On pursuing other matters it's come to my attention recently that when the expense-related allowances were done, that some of them were actually missed out by some of our administrative officers and what I have sought to do at this particular place in time is to bring those up and make them more relevant.

45

THE COMMISSIONER: Yes. Thank you, Mr Benson.

MR BENSON: Also, Commissioner, we did determine not to make or seek that the operative date be today's date giving consideration to some of the length of some of those applications.

- 5 THE COMMISSIONER: Right. Yes. There's nothing further – nothing more you want to add, Mr Benson?

MR BENSON: Other than it's not a major financial impost if these applications are approved, Commissioner.

- 10 THE COMMISSIONER: Having heard the parties, I propose to issue a decision on transcript. That decision will be that the application will be granted operative from the first pay period to commence on or after 1 December 2009. I will issue what will probably be reasonably brief reasons for this decision as soon as possible when we  
15 have the transcript available, but the decision will be that the application is granted operative from the beginning of the first pay period to commence on or after 1 December 2009 with reasons to follow. The commission stands adjourned.

- 20 **MATTER ADJOURNED at 9.45 am INDEFINITELY**