



TASMANIA

# *Tasmanian Industrial Commission*

## Industrial Relations Act 1984

T No. 8838 of 2000

**IN THE MATTER OF** an application by  
The Australian Workers' Union  
Tasmania Branch for an interpretation  
of the Farming and Fruit Growing  
Award

Re: Clause 2 - Scope

PRESIDENT WESTWOOD

HOBART, 31 March 2000

### **TRANSCRIPT OF PROCEEDINGS**

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)  
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

**HEARING COMMENCED 10.43am**

PRESIDENT: I'll have appearances, please.

**MR R. FLANAGAN:** If it pleases the commission. FLANAGAN R. for the Australian Workers' Union, Tasmania Branch.

5 PRESIDENT: Thanks, Mr Flanagan.

**MR T.J. EDWARDS:** If it pleases the commission. EDWARDS T.J. and appearing with me **MR R. BROWN** and **MR V. STEWART** for the Tasmanian Chamber of Commerce and Industry.

PRESIDENT: Thanks, Mr Edwards.

10 **MR K.J. RICE:** Mr President, RICE K.J. I appear on behalf of the Tasmanian Farmers and Graziers Employers Association. If it pleases the commission.

PRESIDENT: Yes, thank you, Mr Rice.

15 **MR D. DURKIN:** If it pleases the commission. DURKIN D. Sir, I don't intend to intervene but just note my presence here today. I may be of some assistance in the matter.

PRESIDENT: Yes, all right. I'm quite happy for you to be here Mr Durkin. Mr Flanagan?

20 MR FLANAGAN: Thank you, Mr President. Sir, in making this application it is the intention of the union to seek a determination by way of interpretation that the activity of spreading fertiliser is within the scope of the Farming and Fruit Growing Award, in particular as that activity relates to the term 'preparation' contained in clause 2(a), which is the scope clause of the award.

25 In respect to that, the union wrote to both the TCCI, the TFGA and Mr Durkin in relation to our views on that point and I'd seek to tender a copy of the correspondence.

PRESIDENT: **EXHIBIT AWU.1.**

30 MR FLANAGAN: You will note, Mr President, that that correspondence was forwarded to the parties on 9 February this year and following that the union did enter into some discussions with TFGA, TCCI and Mr Durkin in relation to the matter with a view to identifying any challenge which those parties may make to the union's view and the basis of that challenge. There was an indication that the  
35 view was not endorsed but not a great deal of detail was provided to the union as to why it was not endorsed.

This morning we've been provided with information, in particular a determination in T30 of 1985 which goes to the heart of how matters

such as this should be pursued in the state commission and it's regrettable that we're not in a position to do that today. In particular, T30 indicates that there is a need for the matter of construction or interpretation of award provisions to be made by considering their meaning in relation to specific facts and we haven't got with us the person that can give those specific facts to the commission. We appear to have an insurmountable hurdle -

PRESIDENT: I wouldn't have thought it was insurmountable.

MR FLANAGAN: For today, it seems to be a hurdle.

10 PRESIDENT: Yes. We have quite an amount of material before the commission in the matter which I know led to this application. The parties no doubt all know?

MR FLANAGAN: Yes.

15 PRESIDENT: Although Mr Edwards wasn't present at it and is shaking his head, almost violently.

MR EDWARDS: Never violently, president.

PRESIDENT: I guess they're running out of cases in your hands.

20 MR FLANAGAN: Yes. What I might do is perhaps outline the differences that appear to have emerged from the discussion that I've had, in particular with the TCCI this morning, which -

PRESIDENT: Would you prefer to do that off the record and we'll go into conference for a while?

MR FLANAGAN: I'd be quite comfortable with that, yes.

MR EDWARDS: We wouldn't object to that, president, at all.

25 PRESIDENT: No objection. We'll go off the record for a while.

**OFF RECORD 10.48am**

**ON RECORD 11.12am**

30 PRESIDENT: As a result of those discussions, the general agreement is that the matter be adjourned, that the applicant will consider its position, have discussions with the parties and get back to me within about a fortnight and we'll see where we go from there.

So the matter is adjourned sine die.

**HEARING ADJOURNED SINE DIE 11.14am**