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TRANSCRIPT OF PROCEEDINGS

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TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER P.C. SHELLEY

T No 10502 of 2002

T No 10525 of 2002

PROFESSIONAL ENGINEERS AND SCIENTISTS (PRIVATE INDUSTRY) AWARD

**Applications pursuant to the provisions of
section 23(2)(b) of the Industrial Relations
Act 1984 by The Tasmanian Chamber of Commerce
and Industry and Professional Engineers,
Scientists and Managers, Australia
to vary award**

HOBART

9.15 PM, THURSDAY, 7 NOVEMBER 2002

HEARING COMMENCED

[9.20am]

PN1

MR J. O'NEILL: I appear for the Tasmanian Chamber of Commerce and Industry Limited.

PN2

MR D. PYRKE: I appear on behalf of the Association of Professional Engineers, Scientists and Managers Australia.

PN3

THE COMMISSIONER: Thank you. I would just like to go off the record at this stage if we might.

SHORT ADJOURNMENT

[9.21am]

RESUMED

[9.40am]

PN4

THE COMMISSIONER: Mr O'Neill?

PN5

MR O'NEILL: Yes, thank you, Commissioner. This application is an application that has been made pursuant to section 23 of the Act to vary the Professional Engineers and Scientists (Private Industry) Award in respect to IT professionals. Commissioner, on 18 September of this year The Association of Professional Engineers and Scientists and Managers Australia made an application to vary the said award in respect to inserting classification and provisions covering professional information technology employees. At the time of that application you will recall, Commissioner, that TCCI consented to that application on the basis that there was no adverse comment from industry and the TCCI themselves concurred with the application made.

PN6

Unfortunately since that time there have been a number of concerns raised within the IT industry in relation to that variation. Unfortunately, Commissioner, TCCI didn't consult widely enough at the time and therefore has given rise to these concerns from the industry. As an employer representative body, Commissioner, as you would appreciate it is imperative that we do consult widely with our membership prior to any award variations affecting those of our members are made. On this basis we would seek that the award be varied to delete reference to IT professionals within the award to allow TCCI to fully consult with industry on this matter.

PN7

At this point, Commissioner, I must say however, that this award does apply to professional engineers and scientists undertaking IT work and that point was never an argument between the parties. The effective date for this variation we

would seek would be today's date. That submission does give rise to the question of employees who have received a benefit from 18 September until today's date and that fact is certainly acknowledged and would need to be addressed on a case-by-case basis.

PN8

Whilst the TCCI in these submissions cannot give a, for the use of a better word, cast iron guarantee in respect to that, I can state on the record that we would advise our member or members in that situation to the extent to which this variation has been sought and that wherever possible the right of an employee would be honoured for that period. Commissioner, on that basis I put this application to you for approval. As I have explained through my submissions the varying of this award is in the public interest as there unfortunately has not been full consultation and the variation is consistent with the wage-fixing principles and we therefore seek that the award be varied as detailed.

PN9

THE COMMISSIONER: Thank you.

PN10

MR O'NEILL: That is the first application. Sorry, there were two draft orders associated with the application.

PN11

THE COMMISSIONER: Yes, with T10525, yes.

PN12

MR O'NEILL: Yes. The second draft order, Commissioner, is to reinstate the provisions so deleted in the previous draft order effective from 1 January 2003 and as I indicated in my previous submissions, this giving time for the TCCI to fully consult industry in respect of IT professionals and award coverage. Again, the application is in the public interest and does not offend the wage-fixing principles in respect of that draft order, if it pleases.

PN13

THE COMMISSIONER: Thank you. Now, Mr Pyrke, if you can respond to Mr O'Neill's submissions and also address the other application that has been joined with this matter which is T10520.

PN14

MR PYRKE: Yes, thank you, Commissioner. This is certainly an unusual application to have to respond to. It is the first time that I have ever had to and I hope I don't put it too highly but hopefully it is the last. It is a very difficult one but on balance we do consent to it and I should indicate why and the circumstances in which we do that. In the first place we have consulted with members to the best that we can. Certainly we have emailed and posted out invitations to meetings to those of the people who were subject to the award prior to 18 September and it is pleasing to hear from Mr O'Neill that he acknowledges that those people always were and always will be covered by the award.

PN15

We also endeavoured to consult with the people who may have come into the award as a result of the variation of 18 September. In speaking to both groups of

people the obvious question was why, why would we consent to this and I guess the short answer to that is we are taking what we see as an enlightened view of the long-term self interest or best interests of those affected. Part of our thinking here is that when we made the application back in September that we were also guilty of some omissions. We, in drafting the order on that occasion, failed to vary the full range of clauses which provided employment conditions to the people who are coming into the award and that needed to be rectified and that is the subject of the next application that will be before you.

PN16

Now, it has never been put to us as a threat by the TCCI that they wouldn't consent to that application but it certainly would have made it difficult for them if I were putting myself in their shoes to consent to our application if we had not been able to consent to this one so basically in the long-term best interests of all people having access to the full range of employment conditions it tell us that it was the way to go and that point of view was picked up by members when we consulted them last night and it is on that basis and on the basis that Mr O'Neill has (a) confirmed that the award already applies to engineers and scientists doing IT work and secondly, confirming that the period between 18 September and today would be honoured for those people who are temporarily in the award. It gives us the basis on which to consent to the application.

PN17

I support what Mr O'Neill has put to you regarding the compliance with the public interest and also with regarding date of effect, namely today's date, so if the Commission pleases, that is as much as I would want to say about the TCCI application subject to any questions that you might have.

PN18

THE COMMISSIONER: Thank you. No, no questions.

PN19

MR PYRKE: Moving on to my own organisation's application which is T10520, I need to start this application by asking for a slight amendment to the application to include two more clauses which escaped my notice when I was drafting the order and those two clauses are firstly clause 3, bereavement leave of part 6 leave and holidays with pay and secondly, clause 3, structural efficiency of part 7, consultation and dispute resolution. I believe that is part 7, I will just confirm that if I may. Yes, that is part 7, consultation and dispute resolution.

PN20

Now, those two clauses again need to be brought into the application and I can send an email or whatever to Ms Sasser later on if that is helpful, but certainly they do need to be part of the application. Now, is that amendment satisfactory?

PN21

THE COMMISSIONER: Well, I will hear from Mr O'Neill in response to your application T10520 generally.

PN22

MR PYRKE: Yes. All right. So my organisation makes this application to address an oversight in the drafting of the order in matter T0411 of 2002. As you

may recall this matter dealt with an extension of the scope of the award to provide application to information technology professionals. That application also changed clause 7, definitions of part 1; clause 1, definitions of part 2; clause 2, salary rates of part 3 and clause 3, classification descriptors of part 3.

PN23

Unfortunately these changes were not as comprehensive as they should have been. Many of the clauses that deal with employment conditions are written in language which limits the application to professional engineers and scientists. These clauses as they currently stand arguably do not give effect to the party's original intention which was and is that all employment conditions should apply to all of the employees who fall within the scope of the award. In short we need to re-write some clauses using more inclusive language and that is what we have endeavoured to do with the application and draft order.

PN24

With this background in mind I propose to address you briefly now on each of the parts of the draft order. Firstly, part 1 deals with termination of employment. In this case it is proposed that references to professional engineers or scientists be replaced with a reference to employee. Part 2 of the application deals with disclosure of qualifications. In this case it is proposed that references to graduate information technology employee and experienced information technology employee be inserted. That proposal would make for a more comprehensive clause and which would give effect to what we - give effect to our intention.

PN25

Part 3 deals with notification of salary and classification. In this case it is proposed that references to professional engineer or scientist be replaced with a reference to employee and ditto with parts 4 and 5 dealing respectively with fares, travelling expenses and travelling time and vehicle allowance. A similar approach has been used in part 6 dealing with annual leave and part 7 dealing with annual leave loading. Here I note however that the deletion of the words "in which the professional engineer or scientist is employed" from the end of subclause (a) in the annual leave clause.

PN26

In my submission the deletion of these words makes the clause easier to understand than it would have been if we had simply replaced "professional engineer or scientist" with "employee". If we had taken the latter approach there would have been a multiple of references to "employee" giving scope for confusion as to who was being referred to.

PN27

THE COMMISSIONER: Just one moment while I check something. I am just looking at A and the order that I have got in front of me - so it is still intended that A says:

PN28

In no case ...(reads)... classified in accordance with =-

PN29

okay, so you are just pegging it to the professional engineer level?

PN30

MR PYRKE: Sorry, are we back on - - -

PN31

THE COMMISSIONER: I am looking at - yes, sorry, I am looking at your part 7 clause A where it still refers specifically to a professional engineer classification.

PN32

MR PYRKE: Commissioner, that is right but it has no effect because the rate is the same for everybody.

PN33

THE COMMISSIONER: Oh, okay.

PN34

MR PYRKE: Yes.

PN35

THE COMMISSIONER: Right. So it is just giving something to refer to?

PN36

MR PYRKE: Yes, that is right.

PN37

THE COMMISSIONER: Okay. Fine.

PN38

MR PYRKE: The reference to professional engineer was there, for example, prior to 18 September when it also applied to scientists.

PN39

THE COMMISSIONER: Right, okay. Just wanted to be sure.

PN40

MR PYRKE: Commissioner, part 8 of the application deals with holidays with pay. In this case we have taken the - what I call the standard approach that we have been following which is to replace professional engineer or scientist with employee. We have done that in the first paragraph of subclause (a). However, in the provision we have endeavoured to avoid confusion by referring to an employee subject to this award rather than have multiple references just to employee which again would have given rise to confusion.

PN41

THE COMMISSIONER: Okay, except we have got "sbject" so there is a little typo to be fixed up there. I will just make a note of that and the draft order says s-b-j-e-c-t instead of subject. That is right, we have fixed that.

PN42

MR PYRKE: Thank you. A similar approach has been taken in part 9 dealing with sick leave. We have got a reference there to an employee subject to this award and again to avoid the confusion that might arise if you just had too many references to the word "employee". The substitution of employee for professional

engineer or scientist is proposed or parts 10, 11 and 12 which deal respectively with equipment and special clothing, professional development and professional employees representative. That leaves us to address the extra parts of the application which I sought to include this morning.

PN43

THE COMMISSIONER: Okay, so that is the bereavement leave and structural efficiency.

PN44

MR PYRKE: That is right, so in the case of bereavement leave - - -

PN45

THE COMMISSIONER: I will just find it in the award. Page 23, yes.

PN46

MR PYRKE: On reflection I am not sure if I can - - -

PN47

THE COMMISSIONER: It says an employee anyway.

PN48

MR PYRKE: Yes. Look, on reflection I think you are right, I think I might have been jumping at shadows there.

PN49

THE COMMISSIONER: That is okay. I would much prefer that it was all checked and double checked and triple checked to make sure it is internally consistent and that is what of course, is going to happen following the hearing.

PN50

MR PYRKE: But certainly I can see a reference to professional engineer or scientist in clause 3, structural efficiency, in part 7 consultation and dispute resolution. In that particular case I would propose just a straight substitution of "employee" for professional engineer or scientist.

PN51

THE COMMISSIONER: Yes. So did you use the computer to locate every reference to professional engineers and scientists in the award, is that how you did it?

PN52

MR PYRKE: I wish I had. I relied on my eyes unfortunately, I probably should have used the computer.

PN53

THE COMMISSIONER: We can probably also double check that today as well because I am sure you have got that facility as well.

PN54

MR PYRKE: Yes, yes.

PN55

THE COMMISSIONER: Okay.

PN56

MR PYRKE: Commissioner, that is as much as I want to say about each particular part of the order. I need to also tell you about how it stands with the wage-fixation principles and the public interest. I submit that the application conforms with the current wage-fixation principles. In particular principle 11 first, an order, an extension to existing award. This being the case I further submit that the application is consistent with the public interest. I can indicate that the application has been discussed with the TCCI and that it has got the - I understand that it has got the consent of the employer representatives.

PN57

On the basis of this submission I believe it is open to you to make an order in the terms set out in the application and I ask you to do so. On the question of date of effect I propose the first pay period commencing on or after 1 January 2003 and this date has been chosen to allow the order to dovetail with the order that is being sought in the previous matter not raised by the TCCI. If the Commission pleases.

PN58

THE COMMISSIONER: Mr O'Neill, would you like to respond to the application T10520?

PN59

MR O'NEILL: Yes, thank you, Commissioner. I will be very brief. TCCI concur with the applications as put to you by Mr Pyrke. The application so sought is consistent with the Commission's wage-fixing principles and does not offend the public interest and we agree with the operative date being 1 January 2003 to align with TCCIs application before you, just heard. If it pleases.

PN60

THE COMMISSIONER: Thank you. Well, I indicate to the party that the award will be varied in the manner sought in all three applications and so the decision and the orders will be issued as soon as possible. That concludes the matter.

ADJOURNED INDEFINITELY

[10.00am]