

**IN THE TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No 2332 of 1990

**IN THE MATTER OF** an application by  
the Woolclassers' Association of  
Australia for the making of a new  
award

re Shearing Industry (Woolclassers)  
Award

COMMISSIONER WATLING

Hobart, 24 April 1990  
Continued from 21.03.90

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances, please.

MR GRENVILLE: Mr Commissioner, **GRENVILLE J.R.** for the Woolclassers' Association of Australia.

COMMISSIONER WATLING: Good. Thank you.

MR HAYES: If it please the Commission, my name is **HAYES**. I'm appearing for the AWU. I think I am probably intervening in these proceedings.

COMMISSIONER WATLING: Right. You are. Right.

MR RICE: If the Commission pleases, **RICE K.J.** for the TFGA Industrial Association, and I'm also appearing at this stage, sir, for the Tasmanian Confederation of Industries, and I believe you have an authority there.

COMMISSIONER WATLING: I do, yes, thank you very much. No objection to Mr Hayes' intervention? No objections. Leave is granted.

Right. Mr Grenville?

MR GRENVILLE: Mr Commissioner, as I understand the problem this morning, Mr Hayes has a certain difficulty in that he is supposed to be in two places at once ...

COMMISSIONER WATLING: Yes.

MR GRENVILLE: ... and more acute by virtue of the fact that these proceedings were relocated to this end of the town.

So, what I simply propose to do is introduce our position very quickly, and then allow Mr Hayes to make whatever submissions he wishes to make, and then I will resume, if you like, my own position.

That enables Mr Hayes to vacate.

COMMISSIONER WATLING: Very good. Well done.

MR GRENVILLE: Mr Commissioner, when this matter previously came before this Commission, which was on 21 March

1990, to reduce it to its simplest terms the Commissioner (yourself) determined that on the next occasion what you would hear would be an argument as to the need for an award, the question of the name of the award, and the scope of the award, and that then the proceedings would be adjourned at that stage.

Sir, we wish to seek leave to vary our documentation already submitted for the purposes of having an award established as to both name and scope.

As to name, sir, we request leave to vary our original proposal so as to read 'Shearing Industry Award'.

As to scope, we seek leave to vary our original proposal so as to read 'This award is established in respect of the shearing industry'.

Sir, it also indicates from the fact that I'm seeking leave to so vary that agreement has been reached between the parties, between the Australian Workers' Union and ourselves and between the TFGA and ourselves, that those words are appropriate in both respects.

It flows from that that there would be, as far as the agreement between the two unions are concerned, a Part 1 storey and a Part 2 storey, and that the Woolclassers' Association has indicated that it will take up the position under the heading 'Part 2'.

That then leaves the question, as far as we can ascertain it, to be one of presenting to the Commission to the satisfaction of the Commission the need for an award.

I would cease at this stage, Mr Commissioner, and resume following Mr Hayes' submission.

COMMISSIONER WATLING: Right. There is no objections then to the amendment of the application?

MR RICE: No, sir.

COMMISSIONER WATLING: No objection, Mr Rice. Right, thank you.

MR HAYES: Thank you, Mr Commissioner, and I can only apologise. I am not seeking to disrupt these proceedings ...

COMMISSIONER WATLING: No, I understand.

MR HAYES: ... by my departing early, but the position ... I have had the opportunity of discussing the concept of the Shearing Industry Award with Mr Grenville and Mr Rice.

As the Commission is aware, the position in the Agriculturists Award is somewhat nebulous insofar as it seeks to confer jurisdiction in the State Commission merely by reference to the federal Pastoral Industry Award.

The jurisdictional difficulty with that is that they exercise common rule, it is by taking the making of an award of another jurisdiction, and we acknowledge what's been raised previously by this Commission as it would have certain problems to that practise continuing.

The proposal which is now before you, that being the establishing of a Shearing Industry Award, I think adequately caters to the problem at hand, insofar as from the AWU's point of view the Shearing Industry Award would reflect the terms and conditions set within the Pastoral Industry Award as it applies to shearing.

That being the case, it could generally be seen as a counterpart State award - a counterpart to the federal award - and any subsequent moves of the federal Pastoral Industry Award as it applies to

shearing, the State award could be varied accordingly, as is the case in many State and federal counterpart award movements.

We believe that the need is basically one of jurisdiction on necessity, and it certainly to some extent cleans up the operation of the award at a State level.

It provides the benefit of common rule, which is of benefit not only to the union but also to the employer, and will ensure consistency within the scope of Tasmania.

We have certainly no problem in terms of the scope. It is the shearing industry, and what we would think is that there ought to be two pastoral awards, one for the AWU classifications and the other being for the woolclassers.

I did intend, Mr Commissioner, to have an application brought before you and joined to this matter at this stage, and unfortunately again I must apologise as my own inability to do that through time constraints, but we will be making an application to this Commission to have a Shearing Industry Award made.

If these two matters are joined I think it would then be appropriate that the shearing classifications would be at Part I and the woolclassing classifications at Part 2 of that award.

In terms of time-frame I will endeavour if at all possible to get the paperwork for that completed in my current stay in Hobart and have that submitted by the end of this week.

As I say, it would have been a proper course of action to have that submitted and formally joined to these proceedings.

So, if I can just let you know in advance that's the action that we'll be taking, and when we submit it we might make reference to the application that we are seeking to have it joined to this matter.

COMMISSIONER WATLING: Right.

MR HAYES: If it please the Commission, that's all I think I need to say, except to also endorse that the award should be appropriate termed 'the shearing industry award'.

If it please the Commission.

COMMISSIONER WATLING: Good. Thanks, very much.

Mr Grenville?

Mr Hayes, do you want to leave now?

MR HAYES: If I may. May I be excused?

COMMISSIONER WATLING: Yes, certainly.

MR HAYES: Thank you.

MR GRENVILLE: Thank you, Mr Commissioner.

Firstly, I adopt as to the subject heading of under 'needs', the need for an award I adopt completely what Mr Hayes has put to you, and certainly endorse that when the documentation is forthcoming from the Australian Workers Union it's a matter that should be joined to this matter. Indeed, it's the total rationale of what we're now seeking to do.

The documentation before you, Mr Commissioner, in the form of a draft award will also need further variation.

The reason for that is that the week before last in the Federal Commission, arising from the structural efficiency principle story and surrounding matters, it has now been or will be the order of the

Federal Commission that a new award be made, known as the woolclassers award 1990, and some significant changes incorporated therein.

It has the effect of deleting part 2 completely from the award story and incorporating the superannuation awards into a single award approach.

So there is a substantial change that's required.

The transcript was not issuing until yesterday and the order not issuing until today, and so it's been impossible for me to actually properly document the story. But that will be something which flows from subsequent proceedings in this Commission anyway.

COMMISSIONER WATLING:

Yes. They will, yes.

MR GRENVILLE:

Mr Commissioner, as I've said already, we adopt exactly the point made or points made by Mr Hayes as to the need for an award.

When we began this exercise you will recall we sought and obtained registration in the State of Tasmania, having an interest in the Agriculturists Award. And we were of the opinion at that stage that perhaps there was some proper legal standing in those words that were incorporated into that award concerning the pastoral industry.

And we were hopeful at that stage that all that was required, in terms of the story for woolclassers in Tasmania, was that aspect be extended to cover the woolclassers and shearing staff award.

However, our mind has been disabused of that particular proposition and consequently we have sought to establish an award for woolclassers having regard for the significant question of common rule.

The woolclassers have a federal award and have had a history of federal awards going back to 1937.

The award that Commissioner Merriman has just made the week before last would be the fourth of the federal awards for woolclassers. And in the entire period of the time leading up to the making of the recent award, there has been a federal responsiveness of considerable magnitude.

You would be aware, Mr Commissioner, of the tremendous onus on an organisation to have to serve persons in order that a federal award have effect for the protection of the employee concerned - or employees concerned.

In the instance of the Pastoral Industry Award, until 1986 and the Woolclassers Award until the present time, thousands and thousands of persons had to be served for the purposes of ensuring that award had broad effect.

In 1986 the Australian Workers Union, in my opinion, quite correctly using its existing state awards which were counterparts of the Federal Pastoral Industry Award, reduced the service of its log of claims federally to a small group, thus ensuring that: (a) the cost factor involved was significantly reduced; and (b) that the end result was the same.

Namely, an interlocking of the federal award story where the actual argument takes place, where the arbitration story emerges, if necessary, and interlocking that in the common law sense with the state awards that exist for shearers and related classifications throughout Australia under state jurisdictional stories.

Unfortunately the Woolclassers Association of Australia has no such



fall back position. We have no state awards.

And by virtue of a decision of the federal executive some 2 years ago, it was determined that the association should seek state awards to interlock with, to be counterparts to, to be mirrors of the federal award for woolclassers.

And this is the exercise upon which we are embarking today.

We believe that for the Commission to reject this application would be a rejection of the need for all employees to be appropriately covered by an industrial award.

It does not require a great deal of imagination to determine that there must be woolclassers working in the State of Tasmania who have no industrial coverage. Either because the grower concerned for whom they are working for the casual period of the classing situation, that grower is not a member of the Mr Rice's organisation or that grower has not been served as an individual respondent, or the alternative, namely; that the woolclasser is working for a shearing contractor and that contractor is not a respondent to the federal award or is not a member of the Registered Contractors Association.

So there's a whole range of possibilities that emerge for a woolclasser who works in Tasmania that that person will not be covered by an appropriate industrial award. There being no such award existing under state jurisdiction in the State of Tasmania.

It's a very interesting point, Mr Commissioner, that in a recent hearing re pastoral industry superannuation, which is continuing before Commissioner Merriman, it was revealed by an employer

representative that something like 60% of employers in the industry are not paying superannuation, even though there is an award for superannuation in respect of the pastoral industry shearing section and for woolclassers separately.

So there is an extraordinary story of avoidance which either is an evasion of an award responsibility or is a practical avoidance due to the fact that in many instances employers are not bound by any awards in respect of superannuation.

The proposal we put to this Commission is that that should cease at least in the State of Tasmania.

And by virtue of our application today it is a logical conclusion that we seek to have common rule apply, and that this common rule will reflect very adequately the interlocking as the system should be. The federal system and the state system.

We believe for these reasons, Mr Commissioner, an award should be made.

If the Commission pleases.

COMMISSIONER WATLING: Do you exactly how many? Have you any idea how many might be in need of a state award?

MR GRENVILLE: The registration story falls into two parts for woolclassing.

COMMISSIONER WATLING: Yes. Right.

MR GRENVILLE: There is the owner classer story, and that person of course is excluded from the award coverage situation.

COMMISSIONER WATLING: Yes.

MR GRENVILLE: Then there is what we call a professional classer.

COMMISSIONER WATLING: Yes.

MR GRENVILLE: And according the Australian Wool Board, who keep the register, roughly 200 persons are registered as professional classers in the State of Tasmania.

COMMISSIONER WATLING: Right.

MR GRENVILLE: In addition to that, and I think I may have made some mention of this in earlier proceedings, Mr Commissioner, or perhaps at the time when we were seeking registration, we also have a migratory population of persons coming to and from the mainland. Mainly because of skill. And those persons could well be working in a situation which is award-free.

So it's difficult for us to give you an accurate figure, but at least we can advise you that in the State of Tasmania there are roughly 200 persons resident in the state registered as professional woolclassers.

COMMISSIONER WATLING: Right.

COMMISSIONER WATLING: Right. Thank you.

Mr Rice?

MR RICE: Sir, we haven't a great deal to add to what Mr Grenville has said, other than we do not oppose the application. And we support that application, that there ought to be coverage for woolclassers in Tasmania.

We believe there will be very, very few people who it will actually cover, but there is a need for a net there.

Our only ... I wouldn't say, condition. Our support for the application is on the basis that both awards, in particular the woolclassers award at this stage, is a mirror of the federal award, sir. So we'll have that consistency right

throughout the state as far as shearing operations go.

In respect of ... I can't let the piece pass on the superannuation. It isn't ... I realise Mr Grenville isn't speaking about awards of this Commission, he's speaking about the federal awards. I would certainly hope he wasn't including Tasmania in those 60% who are not paying into occupational super. because I'm sure that all our farmers are contributing as they are required to under the award.

On that basis, sir, I would recommend that you make the new award in the terms as sought and we'll go from there.

Thank you.

COMMISSIONER WATLING: Right. No further submissions? Mr Grenville?

MR GRENVILLE: Just one, Mr Commissioner, if I may. And that is in relation to the mirror award position put to you by Mr Rice.

We are emphatic ourselves that it should be a mirror award and will resist very strongly any attempt to move away from that position, either in the State of Tasmania or any of the other states where we seek to have a state award made.

The whole point of the exercise and the agreement entered into between ourselves and the employer associations is, that there should be no attempt made to use state awards, and that includes the State of Tasmania. There should be no attempt to use state awards as vehicles for some other purpose which does not reflect the federal position.

If the Commission pleases.

COMMISSIONER WATLING: So does that mean in the future that ... and obviously it will be discussed at the time, that the

parties are saying that they'll make no application in this Commission until there's been some variation federally.

MR GRENVILLE: That would be exactly our position.

COMMISSIONER WATLING: Yes.

MR GRENVILLE: There would not be any application coming from our end of the argument which did not reflect what had already been determined by the Federal Commission.

COMMISSIONER WATLING: How ... it's probably something that you'll have to address later if your application is successful, and that is: how do you deal with the question of, say, a State Wage Case decision like on this occasion, gave 3% or \$15, \$12.50 and \$10 across the board to all employees under all awards of the jurisdiction because of our common rule decision? You're saying that you are going to actively seek to exclude that award from any movement.

MR GRENVILLE: In principle, yes. Yes, we would have to. We would have to be consistent in our approach in that whilst we would be acknowledging the need for that 3% or \$15 to flow, we would be saying, 'Allow at least for that position to be determined first vis-a-vis the federal award and make an exception, if you like ...' and I'm sure the State Commission is capable of seeing that there are those little problems that might arise in the making of a general order and be prepared to accept submissions accordingly.

COMMISSIONER WATLING: Yes. Well, we have in the past.

But you know it's probably something that you will need to address, because when these type of cases do come up and the Trades and Labor Council and the Confederation of Industries on this occasions made it a joint sort of submission to the

Commission saying that all awards should be treated in a like fashion.

I must say that they did argue exclusions for the building trades, and it was excluded. But it's something that you would have to be mindful at the time when these things come forward.

MR GRENVILLE:

I accept that, Mr Commissioner.

What I'd be also doing in a situation like that is in having regards to legislation - that is the role of the Tasmanian Trades and Labor Council. We would be seeking to instruct the TTLC as well that this circumstance exists and that the position should be put.

COMMISSIONER WATLING:

Right.

Right, no further submissions.

I'm going to indicate to the parties now that I'm going to accept the submissions put and I will be handing down a written decision. And I indicate to you now it will be for the making of a new award in the terms of the name and the scope. But I will convert all that to writing.

It will mean parties will be able to appeal that decision.

If not, then the next step would be to seek, after the appeal period, a section 65 hearing from the Registrar. And that is to have their certificate withdrawn and reissued with the name of the new award added.

And that's the time we'll hear the parties and persons bound to the award.

Now I might just turn off the record here, please.

...

COMMISSIONER WATLING:

And so I'll now adjourn these proceedings and, as stated earlier, I'll hand down a written decision in due course.

Thank you.

HEARING CONCLUDED