



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 LEARY

HOBART, 24 January 2001

TRANSCRIPT OF PROCEEDINGS

Unedited

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

HEARING RECOMMENCED 11.03am

PRESIDENT: These two matters will be heard together. They are related in some form. Could I take the appearance please.

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

PRESIDENT: We've received a fax from Mr Durkin who was representing the respondent in one of the matters. Have you got a copy of that?

MR FLANAGAN: No, I haven't received a copy.

10 PRESIDENT: Well, perhaps I will read it onto the record and we can make a copy available to you. It says:

15 *This application became the subject of legal argument as to the appropriateness of the Farming and Fruit Growing Award as the basis of the claim. The TFGA [which I think is the Farmers and Graziers] and TCCI had intervened at a late stage in support of the respondent position. My notes [and this is Mr Durkin speaking] record an understanding reached [I presume that is reached] between all involved including the union on 31 March 2000 to the effect that the award would not cover the respondent's business as it then was. We are in receipt of correspondence from Don Hayes, Branch Secretary of the AWU attempting to obtain an agreed statement of facts. This request is somewhat confusing in light of the technical problem we believe the application has. There is a Fertiliser Award albeit without*
20 *content that may well be the relevant award.*
25

I have been through the files - I don't know what all that means actually.

MR FLANAGAN: Yes, well perhaps if I can assist you, president. Matter number T8763 of 1999 was an application made by the union
30 to recover underpayment of wages pursuant to the Farming and Fruit Growing Award. In the course of the proceedings, the then President Westwood entered into conference between the parties and it was recognised that under the structure of the state Act, given that there was a contest about whether or not the Farming and Fruit Growing
35 Award in fact underpinned the employment of our member, that it would be necessary for an application to be lodged pursuant to the Acts Interpretation provisions and for the president to make a determination about whether or not that award applied.

PRESIDENT: Right, so that's the other application ..[inaudible]..

40 MR FLANAGAN: So that's T8763 of 1999. Now that matter cannot proceed until matter T8838 is determined, and if I can deal with that

matter. When that matter was last on - and I believe the date of 31 March is probably accurate from recollection -

PRESIDENT: Yes, it is.

5 MR FLANAGAN: - I agree with Mr Durkin's notes in that respect -
the matter was listed for hearing and immediately prior to the matter
going on to hearing the TCCI very generously provided the union with
a copy of this commission's seminal decision in relation to
10 interpretation and the effect of that decision is a little different to the
way that interpretations are conducted in other jurisdictions, and so
the presentation of the case was not able to go ahead that day.

Subsequently the then President Westwood retired and the union has been waiting for a president to be appointed and we congratulate you in that respect.

15 PRESIDENT: I'm beginning to wonder about that now in light of what
you're telling me.

MR FLANAGAN: So what we'd like to do now is move forward with
the hearing of matter number T8838 - obviously not this morning. We
certainly reject Mr Durkin's notes that there was some understanding
20 by the union or acceptance of the alleged Fertilising Award applies to
the circumstances of this matter. We are still of the view that the
Farming and Fruit Growing Award applies and it is consistent with
that; that on 2 May 2000 the union wrote to Mr Durkin and sought an
agreed statement of facts and that was designed to minimise the
25 proceedings before the commission so that the matter could be
determined expeditiously.

PRESIDENT: That's in respect to the claim for underpayment or in
respect to the interpretation?

30 MR FLANAGAN: No, that was in respect of the interpretation and
I'll provide the commission with a copy of that correspondence in the
future.

PRESIDENT: That would be helpful. All right, so what you are saying
is we need to proceed or you wish to proceed with the interpretation
which is T8838.

MR FLANAGAN: That's right.

35 PRESIDENT: Once that is dealt with -

MR FLANAGAN: That will determine -

PRESIDENT: - T8763 will determine what happens, if anything.

MR FLANAGAN: Well, it will move forward or not move forward.

5 PRESIDENT: Yes. All right. Okay, well I will make available to you a copy of Mr Durkin's letter and we'll look at setting down a date for hearing. Can you give me some indication of the time because I take it there will be some interveners consistent with what's happened in the past.

MR FLANAGAN: There may be. I believe that a day should be allocated to the matter.

PRESIDENT: One day. All right. We shall check diaries in due course and find a day to put aside to proceed with that matter.

10 That matter is adjourned and will be listed on a date and at a time to be fixed.

HEARING ADJOURNED SINE DIE 11.10am