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TRANSCRIPT OF PROCEEDINGS

O/N 1762

TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT P.C. SHELLEY

T No 12020 of 2005

HORTICULTURISTS AWARD

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Australian Workers Union to vary the above
award re minimum wage and ordinary hours**

HOBART

10.30 AM, WEDNESDAY, 11 MAY 2005

**This transcript was prepared from tapes recorded
by the Tasmanian Industrial Commission**

HEARING COMMENCED

[10.45am]

PN1

MR R. FLANAGAN: I appear for the Australian Workers Union, Tasmania Branch.

PN2

THE DEPUTY PRESIDENT: Thank you. I note that there is no appearance on behalf of the TCCI.

PN3

MR FLANAGAN: Thank you, Deputy President. Deputy President, if I can indicate to you, the purpose of this application is to apply the standards of principle 7 and principle 12 of the current wage fixing principles to the Horticulturists Award. I need to indicate to you that whilst that is the intent of the application, on the schedule which was attached to the application there are in fact some errors which we would be seeking leave to amend in the application.

PN4

The other aspect this morning is that, as you have noted, the TCCI is not present this morning. I have discussed this matter with Mr Watson, who has indicated that the TCCI will not oppose the application insofar as it relates to applying principle 7 of the wage fixing principles - that is in relation to the minimum wage - but would want further discussion in relation to principle 12, hours of work, as it relates to this application.

PN5

So if I can perhaps start by taking the Commission to the proposed form of variation. Variation number 1 seeks to vary clause 7, Definitions, by inserting at the end of the current definition of "Horticultural Tradesman" the words:

PN6

...or equivalent Australian Qualifications framework.

PN7

THE DEPUTY PRESIDENT: Hang on. What I have got is an application to vary clause 8 - I see, yes. It is right up the top of the page and it looks like a heading.

PN8

MR FLANAGAN: Yes, it does, unfortunately.

PN9

THE DEPUTY PRESIDENT: Right. So that is the variation?

PN10

MR FLANAGAN: Yes.

PN11

THE DEPUTY PRESIDENT: Yes.

PN12

MR FLANAGAN: Now, look, the objective of variation number 1, by inserting into the award those words, is to avoid any argument that may be had around the issue of an employee having satisfied a competency-based training arrangement but not having undertaken the traditional apprenticeship of four years. So all that that is intending to do is to update the award to ensure that contemporary training arrangements are in fact reflected in that definition of Horticultural Tradesman.

PN13

THE DEPUTY PRESIDENT: Okay. And is that variation by consent, to your knowledge?

PN14

MR FLANAGAN: I believe so. The second variation seeks to insert the minimum wage provision contained within principle 7. Now, I need to indicate that the application is erroneous. In V(i), it identifies a rate of 448.40. That should in fact identify a rate of 467.40, which I understand is the current minimum rate. On the following page at the top, where it has got (iii) - and that is above Proposed Variation 3 - it refers there to the July 2003 State wage case. It should say the July 2004 State wage case decision, and it should refer not to T10887/2003 as it currently does, but rather to T11548/2004 - the 2004 wage fixing principles.

PN15

So I would seek leave to amend the application in the proposed variation number 2 as detailed. Deputy President, the effect of that is simply to insert into the award the standard clause provided for in the wage fixing principles, and to delete the existing subclause 5 which currently - contrary to the wage fixing principles - provides for a minimum rate of 323.10. So that is simply addressing that anomaly. The third variation which - - -

PN16

THE DEPUTY PRESIDENT: Okay. Now, you say that that one that you have just outlined is by consent also?

PN17

MR FLANAGAN: That is correct.

PN18

THE DEPUTY PRESIDENT: Yes.

PN19

MR FLANAGAN: The third variation varies subclause 3 of the current clause 8, but again there are some errors which are contained within the application. It appears that instead of identifying the minimum rate as 467.40, the union has identified it as 476.40 and transposed it incorrectly.

PN20

THE DEPUTY PRESIDENT: So the current award rate is \$476?

PN21

MR FLANAGAN: That is right. So what we would - - -

PN22

THE DEPUTY PRESIDENT: For the first two - - -

PN23

MR FLANAGAN: For the first two, yes.

PN24

THE DEPUTY PRESIDENT: - - - and 440.70 for the third.

PN25

MR FLANAGAN: And for the third we are proposing that that figure should say 467.40, not the 476.40 which is proposed.

PN26

THE DEPUTY PRESIDENT: Yes, so it is the minimum wage.

PN27

MR FLANAGAN: That is right.

PN28

THE DEPUTY PRESIDENT: Yes.

PN29

MR FLANAGAN: And in respect of a fork-lift driver and the motor lorry driver, we would simply seek to maintain the current rate of \$476 for each of those. Clearly what that means is that the base rate which is identified for each of those occupations will need to be altered to reflect the total outcome of the rate for each classification. So I would seek leave to amend the application to that extent.

PN30

THE DEPUTY PRESIDENT: So are you going to provide me with a clean copy with all of the - - -

PN31

MR FLANAGAN: Yes, we will do that, Deputy President.

PN32

THE DEPUTY PRESIDENT: Okay. And that is by consent also?

PN33

MR FLANAGAN: That is by consent. Now, the fourth variation proposes to vary the award in accordance with principle 12, standard hours, of the wage fixing principles, to convert the award from what is currently a 40-hour week award to a 38-hour week award. The TCCI have indicated that they would want a further discussion about that issue. The union is happy to facilitate that approach. So what we propose is to delete variation number 4. The union will file a separate application in respect of that matter.

PN34

We propose therefore that the award be varied as amended to reflect variation number 1, 2 and 3 of the schedule attached to the application. We would say that given that the variation simply seeks to reflect the standards which are

contained in the wage fixing principles, it does not offend the public interest. Therefore, given that it is consented to by the employers and reflects established standards of the Commission, that the award should be varied as sought.

PN35

THE DEPUTY PRESIDENT: With an operative date of?

PN36

MR FLANAGAN: We are seeking an operative date of the first full pay period on or after today's date.

PN37

THE DEPUTY PRESIDENT: Okay. Well, subject to confirmation in writing from the TCCI that 1, 2 and 3 are by consent, then the award will be varied in the manner sought. If there is an indication - which clearly won't happen - that there is not consent, then I will have to bring it back on to hear from them.

PN38

MR FLANAGAN: Certainly, I understand that. Thank you, Deputy President.

PN39

THE DEPUTY PRESIDENT: Thank you. The matter is adjourned.

ADJOURNED INDEFINITELY

[10.50am]