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TRANSCRIPT OF PROCEEDINGS

O/N 9127

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER P.C. SHELLEY

T No 10537 of 2002

FISH, AQUACULTURE AND MARINE PRODUCTS AWARD

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations
Act 1984 to vary award**

HOBART

10.30 AM, FRIDAY, 24 JANUARY 2003

HEARING COMMENCED

[10.30am]

PN1

MR R. FLANAGAN: I appear on behalf of the Australian Workers Union, Tasmanian Branch.

PN2

MR P. BAKER: I appear on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union.

PN3

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

PN4

THE COMMISSIONER: Thank you. Mr Flanagan?

PN5

MR FLANAGAN: Thank you, Commissioner. Commissioner, this application seeks to vary the Fish, Aquaculture and Marine Products Award to overcome what appears to be an oversight within the award. I will take you to the provisions shortly, but the award's ordinary hours of work provisions seem to comprehend the working of ordinary hours on Sundays and public holidays. That practice appears to have been implemented as the nature of the industry has changed, but the award itself contains only a provision in Part V1(2)(a) for four weeks annual leave. So the difficulty which confronts the unions is that we have in fact have employees working continuous rosters of work on Sundays and public holidays, but not seeking -not having access to the well established standard that where continuous work is being performed employees receive five weeks annual leave.

PN6

Now, the matter has been the subject of the union pursuing it for some time with the TCCI. On 2 October in 2001 the union wrote to the TCCI and identified to the TCCI that the purpose of the application is to place into the award an additional week's leave for continuous shift workers in accordance with the established standard. The award is currently deficient in that regard. And attached to that correspondence is in fact the schedule of variation attached to the application. That then led to a period of consultation by TCCI with its members, a very lengthy one and the union further wrote to the TCCI on 21 August 2002 regarding the matter. Again, attaching the application which was proposed seeking a response from the TCCI.

PN7

Again on 11 September 2002 the union again wrote to the TCCI regarding the matter. On 13 September 2002 the TCCI advised the union that they had received no adverse comments from their members regarding the proposal for five weeks annual leave for employees engaged on continuous shift work and therefore that they have no objection and generally agreed that five weeks annual leave for continuous shift workers is considered the standard. So the union then subsequently made the application which is dated 14 November which is now before you.

PN8

Now, Commissioner, if I can take you to the relevant provision of the award. You will see Part VI(2)(a) it currently states, "A period of 152 hours leave shall be allowed annually to an employee other than a casual employee, after 12 months continuous service of the same employer." Now, if I can take you to the variation the schedule of variation attached to the application seeks to delete that provision and then insert a new provision. And the effect of the new provision is to restore the current subclause (a) in identical wording, but to then insert a second provision providing in effect for five weeks annual leave for people who regularly work on Saturdays, Sundays and statutory holidays.

PN9

So if one then goes to the actual award. In particular to the hours of work provision in Part V Hours of Work, Penalty Payment, Shiftwork and Overtime in clause (2) hours of work and if one goes to subclause (b)(ii) this is of clause (2) you will see that the award provides:

PN10

Normal work cycles shall be Monday to Friday inclusive, provided that by agreement ...(reads)... may also be worked.

PN11

And one of those is Sunday to Thursday inclusive, the other being Tuesday to Saturday inclusive. Again further down the page in subclause (5) work outside the span of hours, in paragraph 2 it states:

PN12

All employees who work on Saturday or Sunday as part of the work cycle shall ...(reads)... hours of work and shall receive -

PN13

And it goes on to provide penalties. Now, subclause (b)(i) talks about the ordinary hours of work being between 5 am and 7 Monday to Friday inclusive. So what that clause is very clearly recognising is that you can work outside Monday to Friday. Again, if one then goes to the same part but clause (5) Shiftwork Division A Process Attendants Fin Fish and/or Shellfish, and one goes to subclause (b) it is very clear there:

PN14

This subclause shall apply to shift workers or continuous workers herein before defined.

PN15

And then it goes on to proscribe the parameters for the working of continuous shiftwork. So in two - well, three of the provisions of the hours of work depending on which division people are in, division A which is the clause 2 provision for process attendants, division B for the sea based fin fish employees, it is clear that there is a provision for the working of continuous shiftwork. But the award in its current form only provides for four weeks annual leave. I would seek to tender an extract of the Research Manual of Industrial Law under the heading Annual Leave.

PN16

THE COMMISSIONER: Right, we will mark that A1.

EXHIBIT #A1 EXTRACT FROM THE RESEARCH MANUAL OF INDUSTRIAL LAW

PN17

MR FLANAGAN: Now, the purpose of this exhibit is simply to confirm the proposition that in fact it is a recognised industrial standard that continuous shift workers receive five weeks annual leave rather than four. And you will see that the general principle was established in the shift workers case 1972 and then there is a number of other cases where that principle has flowed on, be it New South Wales, Federally, it is in transport, health, steel industry. So where you have this continuous shiftwork the very clear proposition is that those people receive five weeks annual leave. So consistent with that and having reached agreement with the TCCI the union seeks by consent to vary the award to give effect to the schedule attached to the application.

PN18

We would submit that there is nothing within the application which offends the public interest. And therefore there is nothing precluding the Commission under section 36 of the Act to grant the application sought. If it pleases the Commission.

PN19

THE COMMISSIONER: Thank you. Mr Baker?

PN20

MR BAKER: Just to add that Mr Flanagan has succinctly encapsulated the application that is before you and we would ask that the matter be approved consistent with the tests as laid down in the Act.

PN21

THE COMMISSIONER: Thank you. Mr O'Neill?

PN22

MR O'NEILL: Yes, thank you, Commissioner. As Mr Flanagan indicated the TCCI have consulted broadly and extensively with the industry. We have received no adverse comment, or in fact no comments whatsoever, despite consulting industry now on four occasions. On that basis we consent to the application. We say that five weeks annual leave is consistent with industrial principles and industry standards and on that basis we would request that the application be approved. It does not affect the public interest and it is in accordance with the wage fixing principles. The operative date I don't think has been discussed, but given the fact that we have received no comment from our members we would request that the operative date be effective say two weeks from today to allow TCCI to go out to our members indicating that the award will be varied with effective date from the date to be set. If it pleases.

PN23

THE COMMISSIONER: Can anybody tell me what the date is two weeks from today?

PN24

MR FLANAGAN: I may be able to assist the Commission with that.

PN25

MR BAKER: 7 February.

PN26

MR FLANAGAN: Thank you.

PN27

MR BAKER: 7 February.

PN28

MR FLANAGAN: We would consent to 7 February.

PN29

THE COMMISSIONER: Well, thank you. I indicate to the parties that the award will be varied in the manner sought with an operative date of the first full pay period on or after 7 February 2003 and that order will - the decision will issue and the order will issue in due course.

ADJOURNED INDEFINITELY

[10.40am]

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LIST OF WITNESSES, EXHIBITS AND MFIs

**EXHIBIT #A1 EXTRACT FROM THE RESEARCH MANUAL OF
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