



Tasmanian Industrial Commission
Industrial Relations Act 1984

T No. **7906 of 1998**

IN THE MATTER OF an application by
the Australian Municipal,
Administrative, Clerical and Services
Union to vary the Produce Award

Re: to vary all the clauses of the award to
reflect:

1. Principle 2 - Structural Efficiency - of the
1999 State Wage Case decision;
2. Principle 5 - Minimum Rates Adjustment
- of the 1999 State Wage Case decision;
3. Principle 16 - Award Review Process - of
the 1998 and 1999 State Wage Case
decisions

DEPUTY PRESIDENT WATLING

HOBART, 3 October 2000
Continued from 5 September 2000

TRANSCRIPT OF PROCEEDINGS

Unedited

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

HEARING RECOMMENCED 2.27pm

DEPUTY PRESIDENT: Any alteration to appearances?

MR P. MAZENGARB: Mr Deputy President, if the commission pleases, PAUL MAZENGARB, representing the Tasmanian Chamber of
5 Commerce and Industry and also the Hop Producers' Association of Tasmania in lieu of Mr Andrew Flood. If the commission pleases.

DEPUTY PRESIDENT: Good.

MR R. FLANAGAN: If it pleases the commission, FLANAGAN R., for
10 the Australian Workers' Union, Tasmania Branch. On the last occasion I appeared also for the National Union of Workers but I have no instructions in that regard today.

DEPUTY PRESIDENT: Thank you. You didn't sleep over from last night did you?

MR FLANAGAN: Sleep over? No.

15 DEPUTY PRESIDENT: It seems we left pretty late last night, I thought you might have slept under the bar table or something.

MR FLANAGAN: It would have been the best way to go I think.

DEPUTY PRESIDENT: Right. We might just go off the record for just a second.

20 **OFF RECORD 2.28pm**

ON RECORD 2.31pm

DEPUTY PRESIDENT: Mr Paterson?

MR PATERSON: If the commission pleases, I have three documents
25 that I'd like to tender. The first is a statement of particulars which I would in fact seek leave to vary the application to include this as the statement of particulars in the application in T7906.

DEPUTY PRESIDENT: Good. Thank you.

MR PATERSON: Subject to your acceptance of this, this to my
30 understanding, and I put it forward on this basis, but it specifies the principles that this application relies on in terms of the current Wage Fixing Principles.

DEPUTY PRESIDENT: Good. Right. Now I don't know what exhibit number this might be.

MR PATERSON: I believe ASU.1 is probably an earlier amendment.

DEPUTY PRESIDENT: Yes, **EXHIBIT ASU.2**. Now is there any objection to the application being amended in this form?

MR MAZENGARB: No objection, Mr Deputy President.

MR FLANAGAN: No objection.

5 DEPUTY PRESIDENT: Leave is granted.

MR PATERSON: The second document that I will put forward is in fact the consolidated draft order which to assist the process I believe you've previously been provided with a copy, but for the sake of consistency -

10 DEPUTY PRESIDENT: Yes, we'll mark this **EXHIBIT ASU.3**.

MR PATERSON: - I will table that today which is the definitive document, if you like, for the proceedings from this side of the bench. And again for the completeness of the record I would also like to table a three page document which is the proposals for the - and my
15 understanding is, is with the consent of all the parties - the proposals for the minimum rates adjustments in three instalments, if you like. These are of course not part of this variation or this application, however, we'd seek to put those on the record as the consent of the parties to the three step implementation of the minimum rates
20 adjustment.

DEPUTY PRESIDENT: Should I mark this 'matters for information'?

MR PATERSON: Well, I think it's more than information, if the commission pleases, because I'd like to have the status of binding the parties at least as far as these proceedings go to a future course of
25 action which will of course not take effect until the orders are made - the applications are made for subsequent -

DEPUTY PRESIDENT: It wouldn't have any more standing than the one that I'm going to rule on at the moment. It's an indication of what your agreement is but it certainly has no more standing than that.

30 MR PATERSON: No, the standing I would see, it is a statement of the agreement of the parties at this point in time in terms of the first minimum rates adjustment which is the subject of this draft order and a documentation of the agreement of the parties at this point in time to further minimum rates adjustments which will need to be subject of
35 application and consideration in their own right in due course.

DEPUTY PRESIDENT: **EXHIBIT ASU.4**.

MR PATERSON: Again, I just take a little of the commission's time before handing this matter across to others to respond. Following our last appearance before you, the parties undertook to address some of

the issues that you yourself had raised and we did have a draft here before us. I received on 12 September, correspondence from the Chamber of Commerce and Industry from Mr Andrew Flood that identified some corrections that needed to be made. They were
5 corrections to Part III, Clause 5 - Payment of Wages. There was a numbering error there. In Part V, Clause 1 - Hours, there was an omission there which has been rectified so that the subclause (c)(v) includes the words 'and 7.00am to 12 noon Saturday' to be added, and the allowances respectively for cold places, dust allowance, first aid
10 and tool allowance were increased in line with the State Wage Case decision of this year.

I advised all the parties to the commission of those changes and subsequently had advice formally from the Shop Distributive and Allied Employees Association that they agreed with the variations listed and it was dated 13 September - correspondence from Paul Griffin, General
15 Secretary.

Prior to - sorry, I've got myself a little bit out of order - prior to that previous list of changes which were identified by the TCCI, I did provide a draft to all parties. That draft was circulated on 11 September. I
20 apologise for getting this out of order - so I'm working backwards.

We had a draft from the TCCI dated 15 February and changes were made to that draft to produce an 11 September draft, that included the \$15 State Wage Case, re-ordering clauses in the parts alphabetically,
25 deleting training provisions, some minor changes to the clerical and administrative employee classifications and some other minor wording changes and including carer's leave in the application which had not previously been done.

All parties were circulated on 11 September with the draft that did that and all parties were advised of the subsequent changes in my memo of
30 25 September. I believe all parties have been advised to the extent that it's practicable and in writing by me as to the changes that produced this draft order.

The substantive matters were previously agreed by the parties in terms of the classifications and the minimum rates adjustments and the
35 other rationalisation within the award.

Finally, I believe it should remain only to say that we'd submit to you that this draft order does give effect to the previous State Wage Case Wage Fixing Principles and does also give effect to the award review
40 process of the current Wage Fixing Principles at principle 12.

Subject to your comments and the comments of other parties, I believe that the schedule of variations as attached to this document accurately reflects the changes made from the current award to the new award provision. I submit to you that it's in the public interest to vary this

5 vary this award, an award which I might observe in passing, I think, is probably one of the awards that has taken the longest to move between conciliations prior to the No. 1 of 2000. The previous consolidation was No. 1 of 1992 and I think that reflects to some extent the state of neglect that this award had fallen into.

So despite the fact that it's probably taken some two and half years or more to get to - or two years - it's probably about - it's very close to two years. I think it's T7906 of 1998.

DEPUTY PRESIDENT: Yes, 23 September 1998 the first hearing.

10 MR PATERSON: It was made in September of 1998, so it's taken two years to get to this point. Nonetheless, it gives me some satisfaction to be able to indicate that I understand this order represents a consent draft order to vary the award. If the commission pleases.

15 DEPUTY PRESIDENT: Just one quick question: this draft order that's been presented contains the first of the proposed three MRAs. Is there any agreement on the spacing of the MRAs?

20 MR PATERSON: My understanding - and I'll maybe defer to Mr Flanagan on that one - my understanding is that they would be six months apart. If there was an agreement - given the delays in processing this that the first and second of what would have otherwise have been four minimum rates adjustments be combined, and it's my understanding that there is agreement that the variations be six months apart -

DEPUTY PRESIDENT: But it's only three MRAs.

25 MR PATERSON: Only three MRAs, that in effect the first minimum rates adjustment combines what at an earlier stage in these proceedings were the first and second of four. So the change is effected in three steps rather than four steps.

DEPUTY PRESIDENT: Yes.

30 MR PATERSON: You'll note from both the award document and the ASU.4 that the Level 6 position, the base rate is at the reference point, if you like, of \$365.20.

DEPUTY PRESIDENT: Yes. Thank you very much. Very good. Mr Flanagan?

35 MR FLANAGAN: Mr Deputy President, the AWU supports and endorses the comments of Mr Paterson and thanks him for his submissions in relation to this matter.

As was indicated, this has been one of the most difficult awards to modernise and much of that goes to the fact that the previous

structure of the award had four divisions, so the simple exercise of redrafting it alone took many hours more than most of the other awards of the commission that have been processed and the award which is before you in fact represents a combined effort of all the parties.

The AWU had a draft of the initial document, passed that onto the TCCI, who has had carriage of the matter principally through much of it, and Mr Paterson has done the work necessary to bring it to finality. For that we thank the ASU.

In those circumstances we'd seek that the commission approve the making of the award in terms of ASU.3.

We also confirm that in terms of phasing-in arrangements, it had been agreed in November of last year that there would be six monthly adjustments in three steps. The effect of that being that the minimum rates adjustment process should be completed within 12 months of the making of the new award so that in effect, contained within ASU.3, are the first two minimum rates adjustments in what would have been a four step process. In six months' time the commission can award, by consent, the second variation proposed, that being on 3 April and then on 3 October 2001 the last minimum rates adjustment can be approved by the commission.

And consistent with the process which the union applied in relation to the Civil Construction and Maintenance Award, formerly the Roadmakers Award, we'll file applications to give effect to that process shortly. If it pleases the commission.

DEPUTY PRESIDENT: One thing I forgot to ask Mr Paterson was the operative date.

MR PATERSON: The operative date - this draft order in fact will encapsulate a number of different operative dates -

DEPUTY PRESIDENT: Yes. The operative date for the safety net adjustment will commence on or after the first full pay period of 1 August. The variations in relation to the deletion of trainees will be the first full pay period to commence on or after 7 September, but in respect of the application for the MRAs and the award modernisation, have you any submission on that?

MR PATERSON: The submission will be the first full pay period to commence on or after today's date, I believe.

MR FLANAGAN: I think it ought to be, in terms of the award, the date rather than the first full pay period.

DEPUTY PRESIDENT: Well, that causes a hell of a lot of work. If it comes out and every company out there has to then instead of looking

at a pay period has to work out all the wage rates in between the pay period.

MR PATERSON: It still relates to classifications and wages so it's -

MR FLANAGAN: Well, we'll withdraw our submission.

5 DEPUTY PRESIDENT: Yes. I just think it would be a nightmare out there if it was halfway through a pay period and they had to try and work it out.

MR FLANAGAN: Yes.

10 DEPUTY PRESIDENT: So any advances on 3 October? No. Right. Mr Mazengarb?

15 MR MAZENGARB: Thank you, Mr Deputy President. Unlike my two colleagues on my right-hand side, I haven't been involved in this matter. As you are fully aware, Mr Andrew Flood has. In relation to the draft order as tabled this afternoon, the position of the TCCI is that we endorse that draft order and we agree with the application of making the award as per that draft order, ASU.3.

20 With regard to the operative date, I have no specific instructions on those matters, Mr Deputy President, but I am happy to take on board the comments made by my two colleagues in relation to the discussions that have been obviously held with Mr Flood.

25 With regard to the MRAs with regard to your suggestion that it be operative from the first full pay period on or after today, I believe that would be appropriate in light of the comments and observations you made in relation to it being a date. It does cause some problems for employers with regard to calculations and other related matters. If the commission pleases.

30 DEPUTY PRESIDENT: Well, I can indicate to the parties I'm going to approve the application. As you say, it's taken a long time to get here, but nevertheless, it's been a worthwhile exercise and at least we get the processes going for the MRAs. I'll hand down a written decision and the order in due course and it will be operative from a number of dates and I've spelled them out to you, but most of all it will be operative from the first full pay period on or after today in respect of the reformatting and the MRAs. The other wage rates will be as per the full bench decisions and other amendments.

35 Nothing further. This matter is now concluded.

HEARING CONCLUDED 2.50pm