



Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. 9236 of 2000

IN THE MATTER OF an application by
The Australian Workers' Union,
Tasmania Branch to vary the
Silviculture and Afforestation Award

Re: Part I Application and Operation of
the Award, Part II Employment
Relationship and Associated Matters,
Part III Wage Rates and Related Matters,
Part IV Allowances, Part V Hours of
Work, Penalty Payments and Overtime,
Part VI Leave and Holidays with Pay,
Part VII Consultation and Dispute
Resolution, Part VIII Occupational
Health and Safety, Tools and Amenities,
and Part IX Award Compliance and
Union Related Matters

DEPUTY PRESIDENT WATLING

HOBART, 8 NOVEMBER 2000

TRANSCRIPT OF PROCEEDINGS

Unedited

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

HEARING COMMENCED 2.16pm

DEPUTY PRESIDENT: I'll take appearances, please.

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

DEPUTY PRESIDENT: Thank you.

MR D. DILGER: If the commission pleases, DILGER, D., for the Tasmanian Chamber of Commerce and Industry Limited.

DEPUTY PRESIDENT: Thank you. Mr Flanagan?

MR FLANAGAN: Thank you, Mr Deputy President. If I can perhaps give you some background to the application which is presently before you. This award was made by former President Westwood in relation to title and scope and was gazetted on 24 November 1999 in the Tasmanian Government Gazette.

Following the gazettal of the award, the union made application for determination of award interest which was granted in matter No. T8804 of 2000, again by former President Westwood.

Following the granting of the award interest, or as a part of that process, another organisation sought to have award interest in the matter and in the decision of President Westwood in T8855 of 2000, that organisation withdrew its application on the basis of understandings between the parties which were placed on the record.

Mr Deputy President, the union then set about drafting what we would regard as a reasonably comprehensive proposal for a new award to regulate the conditions of employment and rates of pay for people in this industry. At the outset, when the union sought to have the award made in title and scope, we expressed to the president at that time that this is a significant application for the state of Tasmania. At the moment, as a consequence of the Regional Forests Agreement and competitive pressures in the international wood industry, there is a need for Tasmania to double the size of its forests in order for existing forest based industries to be able, not only to survive but survive in the long term on a competitive basis.

Flowing from that need, in the past 12 months and indeed for the foreseeable future, there is a significant amount of employment which is occurring within the scope of this award which does not, at this point in time, have minimum rates of pay or conditions of employment prescribed and we are talking here in terms of hundreds rather than tens, Mr Deputy President, and it is as a consequence of the fact that there are so many employees in the industry that the union has - which are unregulated and unprotected by industrial arrangements - that the union places some importance and significance on this particular award and that, in part, explains the significant detail in the award which was filed, or rather, the schedule which was filed with the application in these proceedings.

What we had, in fact, done was drafted the application as you presently have it and forwarded that to the TCCI. Being a responsible organisation, it was our view that, prior to the filing of the application, it would be appropriate for us to meet with the industry and to discuss any concerns which they had and, as we had anticipated it, those concerns, if we were able to, would be encompassed

encompassed within the application which was made.

Consistent with that philosophical approach, the union provided the application to the TCCI, allowed them plenty of time to circulate that to the industry and get their response and agreed to meet and met on 14 September 2000 and I would seek to tender a copy of that correspondence.

DEPUTY PRESIDENT: **EXHIBIT AWU.1.**

MR FLANAGAN: If I can take you to AWU.1, you will see that, at the outset, the correspondence identifies that, as a part of the total agreement package, the union advises the following. So that what we were looking to achieve with the industry was one consent package which we could put before this commission and a number of concerns were identified by the employer in relation to Part I, clause 6 - Definitions, Part II, clause 1 - Contract of Employment, and you'll see a number of issues are identified there. On page 3, inclement weather, rates of pay and the mixed functions clause. On page 4, payment of wages, superannuation, reimbursement of expenses. On page 5, fares and travelling, the industry allowance, leading hand and meal allowance, the special rates and a proposed phasing in arrangement.

The proposed phasing in arrangement in itself is probably quite novel because what the union had accepted, as a part of a total agreed package, was that we would phase in industrial regulation in the industry and you would see there that phase 1, which was proposed to take effect, in our view, in the year commencing 2000 and we mean 1 January, from our point of view, that initially the award would regulate definitions, contract of employment, wage rates, classification descriptors, leading hand allowance, meal allowance, hours of work, meal and crib breaks, overtime and you'll see the rest listed there.

They were the absolute core conditions of employment. In phase two, further provisions would be introduced which dealt with other aspects which weren't dealt with in phase one and in phase three, the final phase, the remainder of the provisions would come into effect. So, rather than producing to the employer one set of regulations in one hit, in order to maximise the opportunity for the industry and employees to familiarise themselves with the contents of the award, that was the objective and that was why we proposed to phase it in.

We saw that as a reasonable approach, given that the industry is presently unregulated, and you'll see from the responses there that the union had attempted to accommodate the concerns expressed by the employers.

A further meeting was held consistent with that approach on 9 October with the TCCI and I'd seek to tender a copy of correspondence in relation to that.

DEPUTY PRESIDENT: **EXHIBIT AWU.2.**

MR FLANAGAN: You'll see in AWU.2, Deputy President, that the union first deals with matters related to the meeting of 14 September under the heading 'A' and further corresponds with the employers in relation to their concerns raised therein and deals secondly with the new matters which were raised on 3 October. Moving through the schedule, if you like, to the application. If I can take you to the last page, you'll see that it was arranged there would be a subsequent meeting between the parties on 12 October. That correspondence

of the 9th was a bit later than was expected but, in any event, the employers were aware of the details contained in 9 October correspondence as it simply reflected the matters discussed and agreed at the meeting.

That meeting, which was scheduled for 12 October, never took place because of the unavailability of the Tasmanian Chamber of Commerce and Industry. However, the union did not perceive that, at that point in time, to necessarily be a delaying tactic so the union sought a further date with the employers and that further date was identified to be 13 October, again with the opportunity to talk about the matter further.

What I'd seek to do is tender a copy of the union's correspondence dated 13 October. So, we had attempted to arrange further meetings with the industry but they had declined, for whatever reason, to meet.

DEPUTY PRESIDENT: **EXHIBIT AWU.3.**

MR FLANAGAN: Mr Deputy President, the effect of AWU.3 was to inform the industry that it was our view that their unavailability to meet and bring the discussions to a conclusion was an exercise by them to delay the process, that the union is committed to the making of this award and would not accept such a delay tactic and that further, as a consequence, we would file an application and pursue the schedule as originally envisaged.

As a consequence of the union filing the application which is presently before the commission - in our view it's a consequence of that, we received subsequent correspondence from the TCCI dated 31 October and I'd seek to tender a copy of that.

DEPUTY PRESIDENT: **EXHIBIT AWU.4.**

MR FLANAGAN: You'll see, Deputy President, that it states:

In light of the upcoming application in the Tasmanian Industrial Commission, would it be possible for us to send a draft without prejudice version of the proposed award which shows everything that has been agreed to at present and things that remain in dispute.

It seems to us, and perhaps Mr Dilger can comment on it, that perhaps the industry is, in fact, prepared to revisit an approach which was originally put by the union that we attempt to work through all of the issues and, if possible, come to this commission with a consent proposition. That's the way we interpret the correspondence of 31 October.

What I can do is indicate to the commission that the union is not going to accept tactics of stall and delay by the industry. However, if there is a genuine preparedness by the industry to bring to a conclusion and address the outstanding matters in the application which are in the award - if they wish to address those issues as a part of a total package and embrace those matters dealt with in AWU.1 and AWU.2, then we would be prepared to go down that path. However, given that there are so many people employed at the moment without any industrial regulation, we believe that the industry ought to be able to come back to us sooner rather than later with a response.

If that is not the way forward, then obviously we will have to move forward in the context of not having a consent position. I guess at this stage, we'd like to

know for our part about the way forward which the industry sees this application going, whether they do, in fact, intend or have a preparedness to enter into real and meaningful negotiations in an expeditious time frame or whether they intend for this matter to proceed in the context of not having a consent position. If it pleases the commission.

DEPUTY PRESIDENT: Mr Dilger?

MR DILGER: Thanks, deputy president. I agree with what the majority of Mr Flanagan has put forward as far as the factual situation goes. Of course, he did make some assertions that it was the intent of the TCCI to perhaps delay and stall the process. I can indicate, sir, that we, at all times, have participated in the discussions with a degree of good faith and the discussions have been very fruitful, we would argue, in the short period of time in which the proper negotiations have been taking place.

Unfortunately, you'll notice there was a meeting on 3 October and we set one down again for 12 October and that's referred to in AWU.2 - unfortunately, the person who I have been dealing with as the main spokesperson for this body was unavailable at that time. That was unintended at the time and was as a consequence of some work-related functions of his own which took him out of the state for a period of two weeks, unbeknown to him at the time, unbeknown to me at the time, and I did have discussions with Mr Flanagan on the 12th. That's why we arranged for another meeting on the 13th but because this person was away for that period of time, of course, the meeting never took place.

The application was made and Mr Flanagan, quite rightly, interpreted our letter on 31 October, which is AWU.4.

The industry remains committed to the process or the intended process of the AWU. It is our intent that where possible, if agreement could be reached, that we would maintain the process through to a consent position.

As Mr Flanagan would be aware there was some significant difficulties in dealing with a large award of this type. It is an unregulated industry. It is very new to them and we do appreciate the lengths that Mr Flanagan has gone to in setting out the phasing in operation and, whilst all that is well and good, at the time we needed the draft to arrive to a single document where we could again put it to our members and have a look at that.

That's been done. I received the draft by e.mail on the 7th and I have forwarded that to my members again and I look forward as soon as they get back to me to meeting again with Mr Flanagan, as we've done on numerous occasions, and we certainly do believe it is possible to proceed with this matter to a consent position if all parties are reasonable.

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

OFF RECORD 2.36pm

ON RECORD 2.44pm

DEPUTY PRESIDENT: I've heard the submissions of the parties. However, I'm going to give the parties a little extra time to bring their discussions to a

conclusion and, hopefully, with a consent approach to this issue and, to that extent, I'm going to adjourn these proceedings until Monday 11 December, at which time I would expect to receive the documentation from the parties and I'm going to be pretty confident that we're going to be dealing with a consent document on that day. So, Monday, the 11th of December. Any questions?

MR FLANAGAN: No. I'd simply like to place on the record, deputy president, that the TCCI have agreed that those further discussions will commence on 16 November and 11 December is intended as a hearing to finalise the terms of the award.

DEPUTY PRESIDENT: Yes.

MR DILGER: Yes. I'm content with that, thank you, deputy president.

DEPUTY PRESIDENT: Thank you. this matter now stands adjourned.

HEARING ADJOURNED 2.45pm