

HEARING COMMENCED

COMMISSIONER: I'll take appearances.

MR P. BAKER: Sir, I appear on behalf of the applicant organisation - P. BAKER.

5 **MR I. WAKEFIELD:** If the commission pleases, I appear on behalf of the Australian Workers Union, Tasmania Branch - WAKEFIELD I.

MR W.J. FITZGERALD: If it pleases, I appear on behalf of the Tasmanian Chamber of Commerce and Industry - FITZGERALD W.J.

10 COMMISSIONER: I understand you haven't been well, Mr Baker, it's nice to see you here.

MR BAKER: Yes, I've made it - well, they tell me I've made a full recovery but there maybe a chance of a relapse so -

MR FITZGERALD: Take it easy.

MR BAKER: I'll take it - yes.

15 COMMISSIONER: Eat less and keep your head down.

MR BAKER: Well, yes, something like that, but unfortunately it keeps popping up here at the commission and fortunately it's been known people have a taken a free kick on occasions. Let's hope that's not going to be one of those occasions today.

20 COMMISSIONER: Yes, well, I hope you have recovered and I hope it keeps that way.

MR BAKER: Thank you, commissioner. This matter actually relates back to the safety net adjustment process. For unknown reasons, the tool allowance has not been varied consistent with the safety net
25 adjustment principle and we are before you today to seek to increase the tool allowance to reflect that adjustment.

I would hand to the commission an exhibit which I've previously forwarded to Mr Fitzgerald.

MR FITZGERALD: Thank you.

30 COMMISSIONER: We'll call that **EXHIBIT B.1.**

MR BAKER: Which indicates the movements in the tool allowance in the federal Metal Industry Award. You will note there, sir, that it does show where the allowance was at \$9.00 which was consistent with the provision in the state award and then it shows three subsequent
35 movements; on 30 May 1995, 8 May 1996 and 16 May 1997 and it shows the print numbers where they were varied - M1568, N2097 and

P1470 respectively and the various C numbers which were related to those matters - C20630 of 1995, C21128 of 1996 and C22275 of 1996.

5 Consistent with our previous position in so far as the application of the federal Metal Industry Award is concerned as opposed to the state Metal and Engineering Industry Award, it would be our submission that the award be varied to reflect that increase, and that is, to increase the award rate for tool allowance from \$9.00 to \$9.60 and we do say, consistent with the principles in so far as it relates to allowances, and I draw your attention to Principle 10.1 - Existing
10 Allowances:

Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect the relevant changes of the level of expenses.

15 And that was drawn, as I indicated to you earlier, sir, out of the arbitrated safety net adjustment principle through point 8.1 - sorry - principle 8 of the principles as enunciated by the full bench of this commission in July 1997.

20 Subject to any questions from the bench, I would urge the commission to vary - and subject to any comments from Mr Fitzgerald or Mr Wakefield, I would ask that the bench approve the increase in the tool allowance from \$9.60 effective from the first full pay period on or after today's date and I do have a draft order to reflect that position.

COMMISSIONER: Mr Baker, we'll call that **EXHIBIT B.2**.

25 Mr Baker, just to confirm the basis of this, you're seeking the increase for those reasons and I didn't get it clearly, but I suspect you said that you're seeking it on the basis of the federal award because that's been the traditional nexus in this case - is that so?

30 MR BAKER: Well yes, sir. There seem to have been some confusion about varying tool allowances *per se* and I must admit I assumed that in fact that the tool allowance was not varied as a result of the safety net adjustment principle. It was brought to my attention last year that in fact that was not in fact the case and as a consequence of that I endeavoured to remedy that situation and I have sought the necessary information and as a consequence of that I have presented to you
35 those - sorry - a reference to those three decisions in the federal commission where the tool allowance has in fact been varied consistent with the arbitrated safety net adjustment principle and therefore I suppose two things: one is, I've sought to vary the allowance consistent with the principles enunciated by this bench and
40 then in support of that position, I have demonstrated in fact the parent award - and I use that phrase advisedly - the parent federal award has been varied to reflect that position and I do have a copy of the last variation, that is, Print P1470 of the Metal Industry Award 1984, Part 1 as varied which in fact shows the actual movement from

\$9.40 to \$9.60. Unfortunately - I would have provided copies of the prints - unfortunately they take some hunting out once they get past the six month barrier, but I'm sure what I provide to the commission ought to suffice.

5 COMMISSIONER: Yes, we'll see what Mr Fitzgerald has to say about that.

MR BAKER: True.

COMMISSIONER: Thanks, Mr Baker. Anything, Mr Wakefield?

10 MR WAKEFIELD: If the commission pleases, we support the submissions by Mr Baker.

COMMISSIONER: Thanks, Mr Wakefield. Mr Fitzgerald?

15 MR FITZGERALD: Thanks, Mr Commissioner. Just in respect to that last point and the need - or the perceived need - by Mr Baker to produce those previous print numbers, it would not be a matter which we'd be contesting in that regard. We would take on face value the print numbers and the adjustments. We're certainly aware that the current allowance in the federal Metal Industry Award is \$9.60 so we wouldn't be requiring Mr Baker to produce that.

20 We do, however, feel that the submissions put by Mr Baker to justify the adjustment in the allowance is insufficient to ensure that the application is successful and quite clearly there is a need - and I did refer you to the question which you put to Mr Baker - and I think it was answered in the positive - was that the basis on which he was seeking to move this was, as you described, the traditional nexus
25 between the so-called parent award of the Metal Industry Award - federal award - and the state award and I'd just question whether in fact it is a parent award and in any event they're in two different jurisdictions and as this commission has in the past hasn't necessarily followed every decision of its federal counterpart.

30 But that's in terms if that is the basis of removing the allowance of \$9.60 then we would have some concern about that because that's not just a ground in our view which would justify the moving of any wage rate or allowance or condition within any state award. This commission, as you'd be well aware, Mr Commissioner, makes its own
35 decisions according to its own principles. And I'm sure the independence of this commission has been jealously guarded in the past and will continue to do so.

40 Now in respect to the allowance principle which Mr Baker quoted from in the decision of 4 July 1997 in matter - I'm just trying to find the number -

MR BAKER: There's several of them.

MR FITZGERALD: - but the full bench decision of 4 July 1997 which dealt with these matters - there are specific provisions relating to allowances and in my submission the only way the commission can act to change allowances is in accordance with those provisions.

5 Now Principle 10.1.1 deals with - and I quote:

Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect the relevant changes in the level of such expenses.

10 Now that is the specific provision relating to expense-related allowances of which this is one, I'd submit.

In respect to principle 10.1.2, that of course are work-related allowances and doesn't apply. But again, the commission is bound, in following its own principles, to adjust any work-related allowances in accordance with that principle and that's basically on work-value considerations.

15 So in essence, Mr Commissioner, the commission hasn't any discretion to depart from those principles when considering an application such as the one before you. So if I can concentrate on principle 10.1. The principle, as I have indicated, the existing allowances can be adjusted from time to time where appropriate to reflect the relevant changes and levels of such expenses.

20 Now the traditional approach taken by this commission in respect to cost-related expenses - reimbursable expenses, if you like - and I quote the meal allowance in previous cases, is to in fact refer to CPI figures, particularly for the Tasmanian region, and there's no relevance necessarily of what has happened in the federal decision which principally applies although can apply to Tasmania, I concede, but principally applies to the mainland states.

30 So, in my submission, the only way the commission can accept the application by Mr Baker is in fact to have before it evidence relating to the CPI adjustments which have occurred in that intervening period which would justify the movement to \$9.60.

35 Now it's not our problem and it's not the employers problem that it hasn't been previously adjusted. It was always open, in my submission, for the union when the various safety net increases occurred to make application on the production of the appropriate CPI evidence to vary that allowance from time to time as the principle states in accordance with the CPI figures for the Tasmanian region.

40 So in that regard, the onus is on the applicant to prove the application. In our submission that onus hasn't been discharged simply because, in my submission, there is no material before the commission which justifies proof of those change in circumstances in

the CPI. The application seems to be based solely on the traditional nexus of the so-called parent award. That, in my submission, is not a consideration in the allowance principle and for those reasons we cannot agree to the application. If it pleases.

5 COMMISSIONER: Mr Fitzgerald, if the allowances in the federal award were changed on the basis of the CPI increases, if that were so, it then remains, does it not, for me to decide or evidence to be brought forward to show that that has happened before in relation to this award?

10 MR FITZGERALD: Mr Baker put nothing in respect to that. It may be that that has occurred in the past. I haven't had time to research that but if it has it doesn't necessarily make that practice right. I just simply put that.

COMMISSIONER: Yes. Well -

15 MR FITZGERALD: But that's a consideration which you could take in determining the matter certainly. You've raised matter now and obviously I have to respond to it but in terms of what I say in response to that, Mr Commissioner, is that certainly it doesn't necessarily make that practice right in the past. There's nothing been put forward to
20 indicate that that has happened that way and in any event my submissions in respect to how this commission can adjust its allowances applies specifically in respect to principle 10.1 and I'd stand by those earlier submissions.

COMMISSIONER: Yes. Thanks, Mr Fitzgerald. What do you say
25 about all that, Mr Baker?

MR BAKER: Well, I think that was an oversight on my part when I was relating to the allowances provision. There are two issues: one relates to principle 8 of the principles which deals with the arbitrated safety net adjustment and then there is Principle 10 - Allowances, and
30 in particular - and I'll take Mr Fitzgerald's point - I drew the commission's attention to the wrong point - it should have been 10.1.2 which talks about:

*In circumstances where the Commission has determined that it is appropriate to adjust existing allowances relating to work or
35 conditions which have not changed and service increments for a monetary safety net increase, such allowances and service increments shall be increased (et cetera).*

Now as far as the Metal and Engineering Industry Award is concerned - that is the state award, let's forget the federal award for a moment -
40 in a state award on the last occasion this matter was before - that is, this award was before this commission for adjustment which followed the State Wage Case in July 1997 which is an application made by the

AMWU amongst other organisations including the Labor Council to reflect the \$10.00 safety net and arbitrated adjustment, all the wage rates in the award were adjusted by the \$10.00 figure.

5 All the allowances in the award were increased by, in round terms, 2% - I think \$10.00 it worked out - 2.0164 or whatever it was - in round terms it was 2%. All the allowances in the award were varied by that figure.

MR FITZGERALD: Including the -

MR BAKER: Including the leading hands -

10 MR FITZGERALD: Expense-related?

MR BAKER: Including leadings hands - they were all varied. The only thing that wasn't varied -

MR FITZGERALD: Sorry to interrupt, could I clarify that in respect to tool allowance?

15 MR BAKER: The only thing that wasn't varied was tool allowance because it was my understanding at the time that that wasn't an item that fell within the ambit of the decision of the commission.

Now I have since discovered that in fact that has not the case. In fact tool allowance in the federal Metal Industry Award had been varied
20 consistent with all the other allowances in the award. So what I am putting to the commission today is that this oversight ought to be rectified and I have provided to the commission prints of decisions - I'm sorry - the print number of decisions which relate to the federal award and it is our strong submission that the commission should
25 remedy the oversight which is the subject of this application before you today.

Now as I've indicated, all the allowances in the award were varied and when you look at those allowances which talk about such matters as slag wool, height, dirt, dust and all the other allowances, they have all
30 been varied consistent with the full bench decision in July of last year and that is really our submission. If you ignore all the rest of what's been said this morning and you simply refer back to the July 1997 decision, all the wage rates were varied, all the allowances were varied.

Now I just pause there for a moment. There were two exceptions: one
35 is the tool allowance and the other area which was not varied was in fact the supported wage provisions and they were excluded because that matter is before a full bench of the commission at the present time and will determine a new figure to be inserted in there. But other than that - and that is provided that the minimum amount payable
40 shall not be less than \$45.00 per week under the supported wage provision.

Now that matter is before - or it was last Christmas - I'm not sure where it is now - that it was before a full bench of the federal commission who were examining that figure. So all the rest of the award was varied with the exception of the tool allowance. So all I'm
5 putting to you today, sir, is that this allowance should be varied to reflect the balance of the award consistent with the bench's decision of July 1997.

COMMISSIONER: Yes. Was the meal allowance changed?

MR BAKER: The meal allowance wasn't varied. I do beg your pardon
10 - that was the other thing - that was varied by a separate application, as I understand, which was made by the AWU. Mr Wakefield might correct me there but I believe the AWU -

COMMISSIONER: Would that be different - would that be the case because it was a cost-related allowance?

15 MR BAKER: Cost-related, yes.

COMMISSIONER: Well, thanks, Mr Baker. Anything else, Mr Wakefield? No.

MR FITZGERALD: Mr Commissioner, there seemed to be something
20 raised and that was that the oversight nature and also the provision in respect to whether it's a cost or work-related allowance which seemed to be new, and I think I should have the opportunity to address it at least prior to you finalising the matter. If I could just very briefly -

COMMISSIONER: Well, perhaps if I say something first.

MR FITZGERALD: Certainly, yes.

25 COMMISSIONER: We'll just go off the record for a minute.

OFF RECORD

ON RECORD

COMMISSIONER: Now, gentlemen, thank you for those discussions.
30 You may want to put something on the record but I will adjourn this matter so that the parties can possibly discuss it and settle it amongst themselves otherwise I'll seek that evidence that I've referred to from Mr Baker. I don't see that it needs to come to that.

I'll adjourn it *sine die* unless, Mr Baker, you want to fix a date just in case it comes to it and I'm more than happy to do that now.

35 MR BAKER: I think it may be appropriate to fix a date, commissioner, because there are several old applications in relation to this award which I have prepared.

COMMISSIONER: Well, next Wednesday, the 11th?

MR FITZGERALD: I can't the 11th, I'm sorry. Is that going to be enough time for you, Phil? Unfortunately I haven't got my diary with me.

5 COMMISSIONER: Well, Friday, the 20th?

MR FITZGERALD: From memory I think that's okay. If I can't do it, I'll get someone else to do it.

COMMISSIONER: Phil?

MR BAKER: Of February?

10 COMMISSIONER: Yes.

MR BAKER: Yes. Hopefully it should only take -

COMMISSIONER: Yes, that's right. Well, hopefully you'll tell me in the meantime it's been fixed. T7343 and we'll make it nine thirty.

MR FITZGERALD: Okay.

15 MR BAKER: Thank you.

COMMISSIONER: Right.

MR FITZGERALD: So you'll come back to me one way or another, Phil, either with that -

MR BAKER: I'll give you the decisions.

20 MR FITZGERALD: Yes. You don't want to give -

COMMISSIONER: Well, listen now, gentlemen, no more of that, thanks. We're on the record, just leave it at that.

HEARING ADJOURNED