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## **TRANSCRIPT OF PROCEEDINGS**

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O/N 0392

### **TASMANIAN INDUSTRIAL COMMISSION**

#### **DEPUTY PRESIDENT P.C. SHELLEY**

**T No 10779 of 2003**

**T No 10794 of 2003**

**T No 10804 of 2003**

**T No 10840 of 2003**

#### **IMPACT FERTILISERS ENTERPRISE AWARD**

**Application pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 lodged by the Australian Mines and Metals Association (Incorporated), the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, the Construction, Forestry, Mining and Energy Union and the Australian Workers Union, Tasmania Branch to make the above award**

**HOBART**

**2.30 PM, MONDAY, 3 MAY 2004**

**Continued from 21.4.04**

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

## HEARING COMMENCED

[2.45pm]

PN207

THE DEPUTY PRESIDENT: Thank you. You will note that today we don't have the Australian Workers' Union present, but they have contacted the Commission to say that it is their understanding that what is happening this afternoon is simply a report back, and on that basis there was no need for them to attend, especially given that they had something on, on the West Coast. So if it is a report back, who is going to be doing the reporting?

PN208

MR FITZGERALD: Well, I am happy to, Deputy President. I have had some discussions with Mr Baker and what I thought we would do is actually put our position on record.

PN209

THE DEPUTY PRESIDENT: Thank you, I will just indicate for transcript purposes that it is Mr Fitzgerald who is speaking.

PN210

MR FITZGERALD: Thank you, I am sorry, I didn't identify myself. I thought the transcript people would have identified my monotonous drawl.

PN211

THE DEPUTY PRESIDENT: They would know your voice by now, yes, they probably do.

PN212

MR FITZGERALD: But thank you. We have had discussions with Mr Baker and there is agreement that I actually put this on record and Mr Baker hopefully will be able to confirm exactly what I said. So effectively I think it is not only a report back but also a list of - an indication of resolutions to proceed further. So if I could put this on record and then obviously you will seek Mr Baker's confirmation of this position. Deputy President, following the hearing last Monday, 26 April, representatives of the company, Impact Fertilisers, and the AMWU met in accordance with your recommendations.

PN213

The AWU in fact made an apology at that meeting. We certainly believe that the meeting was conducted in a friendly manner and I think also that each party was certainly adopting a bona fide position, which I think have resulted in the following outcomes. The AMWU through Mr Baker and Mr Hamisch expressed concerns that the classification structure in the draft award before you did not reflect the national training competencies. There is a mutual belief that in principle the benchmark for the entry level trades classification in the draft document before you is grade 1, which is equivalent to the C10 classification in the State Tasmanian Metal and Engineering Industry Award.

PN214

Now, we hold that belief in good faith based on our reasonable inquiries and research. We can't say that is categorical at this stage, but given that the points assigned to each grades in the respective awards differ significantly, we are not able to be unequivocal about - absolutely unequivocal regarding the entry level trades classification without further discussion and research. It is also the intention of the parties that any translation flying from this exercise will not result

in an increased pay rate for any individual maintenance employee. However, the parties are prepared following the making in the award to discuss any individual translation which would result in an employee being translated to a classification level either below or above the classification currently within the Metal and Engineering Industry Award. There is agreement to include a statement equating grade 1 of the award before you - draft award before you and to C10 of the Metal and Engineering Industry Award, following an agreed independent assessment which confirms this.

PN215

Impact and the AMWU have set down three full days - we are hoping that it will take less, but just in case, we have set down three full days with the intention of expeditiously concluding a comparison between the award before you - draft award before you and the Metal and Engineering Industry Award, based on the previously agreed no pain no gain principle.

PN216

THE DEPUTY PRESIDENT: And is this going to take place at Ridges?

PN217

MR FITZGERALD: Well, we haven't decided on that, that was spoken about but I think it is going to be in Hobart, I don't think we have offered to go to a Queensland island at this point, but, no, I think it will be Hobart but just so that it is certainly - it is consistent with the exercise which we entered into this whole process and that is no pain no gain principle. What that means just to be absolutely certain, Deputy President, is that there is a recognition of the status quo in terms of the existing rates and conditions which apply to Impact maintenance employees. Where there is agreement between the parties in respect of those issues which we discussed, they will be incorporated into the document which is currently before you. Where there is no agreement in respect to the identified differences, the parties will resolve those by further discussion, following the making of the Impact Fertilisers Enterprise Award or - - -

PN218

THE DEPUTY PRESIDENT: So you are saying where there is no agreement you will still go ahead with the award on the understanding that it will be sorted out afterwards?

PN219

MR FITZGERALD: Yes, well, we will resolve those, but we do - if there are any outstanding issues they will be further discussed, and we are happy that they actually come before you for arbitration in line and recognising the principle of no gain/no pain and we see that that exercise will be complete on the same day the award is to be made. In other words, we don't want to see us make the award and then come back some weeks later or months later to have those matters finally determined. So it will be an all inclusive date if you like.

PN220

And as part of all those matters which I think I have faithfully represented on transcript, and I may just check with Mr Fox to make certain that that is correct; it seems to be and hopefully it is the correct version for Mr Baker. But the final issue is that the AMWU or as part of that package if you like, will undertake to take immediate steps to ensure that the current roping-in proceedings in the

Australian Commission will not proceed so that is a report back and if you like a detailing of the outcomes we think - - -

PN221

THE DEPUTY PRESIDENT: Okay. So is that simply on hold or are they withdrawing the application - - -

PN222

MR FITZGERALD: That is up the AMWU, but our understanding is that it won't proceed. There is a listing of the matter later this month in Hobart, and we would leave it for the AMWU to notify the Commission. As to what they do with that, it is in their hands, but certainly at this point it will not proceed.

PN223

THE DEPUTY PRESIDENT: Thank you.

PN224

MR FITZGERALD: So hopefully Mr Baker can confirm that that is a faithful representation, if it please.

PN225

THE DEPUTY PRESIDENT: Thank you. Mr Baker, can you so confirm?

PN226

MR BAKER: I can confirm. As Mr Fitzgerald has indicated to the Commission, we did have a very lengthy meeting on Friday, the 30th which a range of issues were discussed, and I am pleased to advise the Commission that we do have a settlement and I use that terminology cautiously, but we do have a way forward as far as dealing with the making of the Impact Fertilisers Award. As Mr Fitzgerald has indicated, the issue of the classification structure was, as I noted when this matter was previously before the Commission, was some concern to us and there has been agreement reached that nominally there is an equation in relation to the level 1, or the proposed level 1 in the Impact Fertilisers Award and the C10 classification in the Metal and Engineering Industry Award.

PN227

We have agreed to include a statement to that effect and a statement which will lead to the - a review of the classification structure in the award generally. Now, and as Mr Fitzgerald has further indicated, there will be at some stage obviously a translation of the trades group - the current trades group at Impact into that structure. What that may or not find at the end of the day, none of us at the bar table today can indicate exactly what that will be, but the parties have agreed that there will be further negotiations and/or consultation as to how we deal with those issues as and when they arise.

PN228

And the other issue is that we are also committed, as Mr Fitzgerald is committed, that we finalise this matter when it is next before the Commission. And that is that we have set aside some days for negotiations on the award, and at the end of that when we bring the document before the Commission, it will be our intention to hand to the Commission an agreed document. In the event that the document is not - if there are some issues or hopefully very - certainly minor issues only that are outstanding, it would be our intention that those matters be arbitrated on the day of the hearing, so that the award can be made there and then - well, it won't be made there and then on the spot obviously, but it will be made - the arbitration

will be part of the process of making the award, so that it is all dealt with in one hit. And insofar as the roping in exercise is concerned in the Federal jurisdiction, it is my intention to advise our national office that at this stage we will not be proceeding with the roping in proposal, and once the matter has been stood down or stood aside, we will seek to revoke the application. And I trust that I have accurately reflected our discussions?

PN229

MR FITZGERALD: Just one point if I could, Deputy President, just to clarify and I think it was confirming the point which I put on transcript was that the translation exercise that we talked about at some length would in fact follow the making of the award. I think that is what Mr Baker said, but just to confirm?

PN230

MR BAKER: Yes, that is the intention of the AMWU.

PN231

THE DEPUTY PRESIDENT: Yes, then there would be further negotiations as things arise in relation to individuals is my understanding. Have you got a date set down for the summit?

PN232

MR BAKER: For the summit, yes, Deputy President, we have. We are actually meeting on 14 May, 17 May, and if necessary on 25 May.

PN233

THE DEPUTY PRESIDENT: Okay. So if we set a hearing down now for mid-June? Does that seem a reasonable time-frame? If you do use the 25 May date, then that would give you another three weeks after that to finalise documents, etcetera.

PN234

MR FITZGERALD: That should be plenty, I would have thought.

PN235

MR FOX: Is it not too much?

PN236

MR BAKER: You could probably bring it forward.

PN237

THE DEPUTY PRESIDENT: We can make it earlier?

PN238

MR FITZGERALD: What date are you looking at for the hearing?

PN239

THE DEPUTY PRESIDENT: Wednesday, 16 June.

PN240

MR FITZGERALD: Yes, that would have to be the latest, because I go on leave. It can't be a little bit earlier?

PN241

THE DEPUTY PRESIDENT: Yes, yes, we could make it Wednesday, 9 June.

PN242

MR BAKER: Unfortunately, I won't be here, Deputy President, but if - well, there is an assumption that we will have it - - -

PN243

THE DEPUTY PRESIDENT: Yes, but if there are any points to be arbitrated, you might - - -

PN244

MR FITZGERALD: Is there any other time that week, Phil?

PN245

MR BAKER: The Friday.

PN246

THE DEPUTY PRESIDENT: Friday, the 11th?

PN247

MR FITZGERALD: Yes.

PN248

THE DEPUTY PRESIDENT: Yes.

PN249

MR BAKER: That is fine.

PN250

MR FITZGERALD: Is that okay?

PN251

THE DEPUTY PRESIDENT: Yes, well, we will make it for 9.15 just in case if we want to get it all dealt with in a day, just in case there are some things that need to be argued. All right. Well, this matter is adjourned until 9.15 am, Friday, 11 June 2004. Thank you.

**ADJOURNED UNTIL FRIDAY, 11 JUNE 2004**

**[3.00pm]**