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TRANSCRIPT OF PROCEEDINGS

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TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT R.J. WATLING

T No 10597 of 2002

METAL AND ENGINEERING INDUSTRY AWARD

**Application pursuant to the provisions of
section 29 of the Industrial Relations Act 1984
lodged by the Tasmanian Chamber of Commerce and
Industry Limited to vary the above award in respect
of part III, wages and related matters, clause 4 -
administration/clerical junior employees - restoration
of calculation for junior clerical employees**

HOBART

11.00 AM, TUESDAY, 17 DECEMBER 2002

HEARING COMMENCED

[11.00am]

PN1

MR M. WATSON: I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

PN2

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

PN3

MR I. PATERSON: I appear on behalf of the Australian Municipal, Administrative, Clerical and Services Union.

PN4

THE DEPUTY PRESIDENT: Right, that is very good, everyone is to the starting barrier and I thought there was going to be a scratching there for a moment.

PN5

MR WATSON: I apologise for my lateness, Deputy President, Mr Paterson and I were actually at a meeting just prior to this in North Hobart, so in the old days we would have made the hearing, but not now.

PN6

THE DEPUTY PRESIDENT: Yes.

PN7

MR WATSON: First of all, Deputy President, if I can just to I suppose deal with a preliminary matter. The application had a number of percentages that we seek to put back in to the award. However, on doing a re-calculation given the fact that the safety net has gone in from 1 August, I seek leave to amend the application to provide a new set of percentages which would accurately reflect what I am about to put to you in terms of the restoration of the percentages.

PN8

THE DEPUTY PRESIDENT: Do the other side have a copy of what you are going - - -

PN9

MR WATSON: Yes.

PN10

THE DEPUTY PRESIDENT: Okay. Is there any objection to the leave to amend the application?

PN11

MR WATSON: Can I just say, Deputy President, that the new percentages will actually provide more than our original application did. So it is actually providing higher dollar amounts rather than less which I will go to in a second. Deputy President - - -

PN12

THE DEPUTY PRESIDENT: Just hang on a minute. Is there any objections?

PN13

MR BAKER: Sorry, sir?

PN14

THE DEPUTY PRESIDENT: Any objections to leave - granting leave to amend the application?

PN15

MR BAKER: No, sir.

PN16

THE DEPUTY PRESIDENT: Right, leave is granted.

PN17

MR WATSON: Thank you. Deputy President, the Metal and Engineering Industry Award was subject to a fairly rigorous award review process which went over a number of years and was presided over by Commissioner Imlach. And it resulted in Commissioner Imlach issuing the award as a consolidated reviewed document, reformatted from 1 July 2002 and he also included in that order his decision relating to the casual loading which was increased to 25 per cent. So it was all done at once and the parties spent an enormous amount of time on the award over an extended period of time. And certainly as I say it was a fairly rigorous process. Now, if I can I would just like to table the two orders from this year which is number 1 and number 2 of 2002.

PN18

THE DEPUTY PRESIDENT: All right. We will mark order number 1 as TCCI1 and order number 2 as TCCI2.

EXHIBIT #TCCI1 ORDER NUMBER 1 OF 2002

EXHIBIT #TCCI2 ORDER NUMBER 2 OF 2002

PN19

MR WATSON: Okay. Now, if I can just - this was actually the full award, Deputy President, but I have just pulled out the relevant bits. In order number 1 of 2002, if you have a look on the second page, you will see there that under subclause (4) administrative clerical junior employees:

PN20

*The minimum weekly wage rate to junior clerical employees shall
...(reads)... adjustment of level C10.*

PN21

Now, bearing in mind that at that particular point in time the award had a base rate and supplementary payments and a safety net adjustment to make up the weekly rate. Okay. Now, if you then go to the last page which is the summary

of changes made to the award, under subclause (4) there Clerical Juniors, just simply renumbered, part 3 wages and related matters; clause (4) administrative clerical junior employees. So there is no mention there of anything other than simply a renumbering of the classification.

PN22

Now, if we go to order number 2, which is TCCI2 the second document. This is the order that was issued as a result of the safety net adjustment of this year and on the second page there you will see that the words haven't changed at all in the subclause (4) administrative clerical junior employees, it still makes reference to the base rate column and the safety net adjustment of level C10. But the issue was that when the award was issued from 1 August as the result of the safety net adjustment, the base rate and the supplementary payments column was combined which then obviously changed the calculation for those percentages which hadn't been changed to take account of that. So I just wanted to put that before you as background to where we are coming from. Okay.

PN23

THE DEPUTY PRESIDENT: So in effect when you completed the process you never followed through with the consequential amendments to the juniors?

PN24

MR WATSON: That is right.

PN25

THE DEPUTY PRESIDENT: When you combined the base rate and the supplementary payments to give you a total weekly wage for the adults, and I take that that came out of number 1 of 2000 did it?

PN26

MR WATSON: No, what happened, Deputy President, was that in number 1 of 2002 the base rate and the supplementary payments were still separate in the award that was issued by Commissioner Imlach.

PN27

THE DEPUTY PRESIDENT: Right.

PN28

MR WATSON: I think what has happened is that when you have issued the award as a result of the safety net adjustment, you have combined the rates because the MRA process had been completed, so there is no reason not to combine them, but the issue was that as a result of that the percentages for the junior clerical people hadn't been changed to take account of the combination. Now, if I can just table two other exhibits as part of the submission.

PN29

THE DEPUTY PRESIDENT: Right, the document dealing with the operation from, I think, the 1 July we will mark TCCI3 and the other document, I think, falls for a period on or after 1 August we will mark TCCI4.

EXHIBIT #TCCI3 DOCUMENT FROM 1 JULY 2002

EXHIBIT #TCCI4 DOCUMENT, ON OR AFTER 1 AUGUST 2002

PN30

MR WATSON: Okay, thank you, Deputy President. Now, if I can take you first of all to TCCI3. What I have done here is I have said because the award itself doesn't actually produce, or actually quote the rates it just quotes percentages I have actually put the rates in. Now, as at the first full pay period on or after 1 July 2002 at the top there. The base rate was \$365.20 plus the safety net adjustment which made a total of 455.20 and that was what the percentage was based on and that gave you the rates in that right hand side column which commenced with 179.50 going through to 403.90.

PN31

Now, from 1 August 2002 or first full pay period because the supp payment and the base rate was combined, you actually had a calculation, same percentages but on 525.20 which gave you weekly rates ranging from 207.10 through to \$466 which at the bottom of the page there you can see in the third table of rates actually provided increases ranging from \$27.60 to \$62.10 for junior clerical employees and that was simply as a result of the safety net adjustment. So you can see clearly there that that was certainly never the intention of the parties.

PN32

Now, if I can take you now to TCCI4 which is the other document. What I have done there is I have done the calculation in the first point based on the old method if you like which was 365.20 which was the base rate without the supp payment plus \$108 which included this year's safety net adjustment which would - made a total of \$473.20 which was the old calculation point. That with those percentages in there goes from 186.60 through to 419.80. Now, our application which is in point 2 is based on the \$525.20 which is simply the weekly rate now and the percentages have been adjusted to produce exactly the same outcome that would have been the case given the fact that that supp payment was absorbed into the one column now.

PN33

So that is the reason or justification if you like basically for the application. That what we are seeking to do is restore the calculations for junior clerical employees to what they were prior to the 1 August order because it is clearly, as I said, clearly not the case never the intention of the parties that you would actually have in the case of the 20 to 21 year old a \$62.10 per week increase when simply all you were doing was putting a safety net adjustment in to the award. I think it is probably something that the parties should have addressed as part of that final order to combine all the columns but it wasn't done and I think from what I have put to you, Deputy President, it should become clear that it has simply been an oversight and it needs to be rectified.

PN34

So as part of this application we would be seeking for the Commission to issue an order from the first full pay period on or after 1 August 2002 which would

restore the junior clerical percentage classification - percentage calculations to what they were prior to the 1 August order for the safety net adjustment and noting that the percentages have changed to reflect the same outcome that would have been the case had the supp payments column not been absorbed into the one column as it is now. Our submission - - -

PN35

THE DEPUTY PRESIDENT: What does that do though if I was to back date it to 1 August for those people who have been paid it?

PN36

MR WATSON: Well, I guess if someone has been paid the money then - well, Mr Baker and I actually had this discussion prior to you coming in and our position was that I think our advice to the employer would be well if it has been paid then it has been paid. I don't think there is really much that can be done about that, but I don't believe it is going to be very widespread, Deputy President, because the incidence of junior clerical employees in this particular industry covered by the award, I think Mr Baker and I were talking about that as well, it is fairly low.

PN37

Secondly, that the fact that the award doesn't quote rates it just quotes percentages I think probably what businesses would have done in the safety net adjustment was simply increased it by the appropriate pro rata percentage of \$18 per week from 1 August. I mean I can't just give a cast iron guarantee that every - I can't talk for every employer under this award, but certainly as far as our members are concerned if we do get any queries, our advice to them would be well okay if it has been paid then it just has to remain, but as an over award payment I guess.

PN38

THE DEPUTY PRESIDENT: So have the parties talked about drafting up some proviso?

PN39

MR WATSON: No, we haven't. In fact it was only raised this morning as an issue, but I think that the thing is that as per our application we don't believe that - it has simply been an oversight and I think probably the parties fault in not making sure it was fixed from 1 July, but I don't see any reason why it shouldn't be amended to actually reflect what the calculation should have been.

PN40

THE DEPUTY PRESIDENT: I can certainly understand what you are saying, but sort of it is a big issue to go back and take money off people when they probably thought they were entitled to it and even from August it has been a long time from August until now before it is even picked up.

PN41

MR WATSON: Yes. Well, I suppose just to explain to you what happened. Mr Flood did actually pick the error up, or the oversight up and with his departure it sort of got a bit lost in the transfer, but you know so I do accept there has been a delay, but I do think the circumstances are such that perhaps if

I can just put it another way. If the award review process had of resulted in say a conditions matter that had been taken out of the award which was never intended by the parties, which wasn't in the summary at the back of the award, was not on transcript etcetera, then I am sure in fact I would give the commitment that we would come back to this Commission and agree to put it back in retrospectively because it was never the intention of the parties. I think this does fall into the same category.

PN42

THE DEPUTY PRESIDENT: So you are saying the incidence of juniors employed in this industry is very minimal?

PN43

MR WATSON: Well, I do agree with what Mr Baker said, I don't believe that it is very high. I mean not that that should necessarily make any difference but
- - -

PN44

THE DEPUTY PRESIDENT: It probably gives me a view of how big the potential problem may be.

PN45

MR WATSON: Yes, well that is right, exactly. Deputy President, we would be seeking the order from the first full pay period on or after 1 August in accordance with section 37(5)(b) on the basis that there are special circumstances and also on the basis that I think it is fairly common ground between the parties and the Commission that the award review process, unless it is specifically identified in the summary at the back of the award, is not supposed to change conditions to this extent unless it is specifically agreed or decided by the Commission. If it pleases.

PN46

THE DEPUTY PRESIDENT: Good, thank you. Submissions from the union side?

PN47

MR BAKER: Thank you, sir. Yes, as Mr Watson has indicated, this issue was raised with me by Mr Flood via a telephone call and he did follow it up. Actually I will rephrase that. I am not sure that actually he followed it up with a letter, or Mr Watson followed it up with a letter but there was correspondence to my office in mid-August concerning the error which had been - which had occurred and I indicated at the time and I did so by way of correspondence in early September that in fact the AMWU would consent to the application. Because clearly there was an error, an oversight had occurred and it needed to be remedied.

PN48

The issue that I have is the issue that you have touched upon this morning, sir, and that is the delay that has been caused by the application being withheld by the TCCI. The application should have been made and I suppose it is all right in hindsight, but the application should have been made in August, early September. Here we are in late November when the application was made and

the matter is now before the Commission in December. Now, Mr Watson is now asking the Commission to retrospectively adjust the award by way of a wage rate.

PN49

Now, I have some sympathy for the position that he has espoused this morning, but I also have concern about the issue that perhaps there are employees unbeknown to myself and/or to him who are in receipt of those rates of pay. And by your application, proposed application in varying that award to give an effective date of 1 August, regardless of what we may say as advocates the employer has a legal right to in fact recover the money from the employee if it is deemed to be overpaid.

PN50

I would propose a two-fold course of action, one of which I touched on briefly with Mr Watson and that is that there is some explanatory note contained in the award which I think there ought to be anyway regardless of the circumstances. But there ought to be some explanatory note - sorry, a proviso that says where the rates of pay have been at this level for the period then it is accepted that the money earned during that period be retained by the employee or words to that effect. Or secondly then I would - and if that is not feasible nor possible, then I would most strongly object to the operative date being 1 August.

PN51

I accept what has been put is that there are not many junior clerical employees in the industry as such, but there are - there is the issue of trainees which we should not overlook which Mr Paterson may like to comment on later on, but there are, you know, from my observations within the industry, there are not that many - well, I said to Mr Watson the number of the blue places I go to I can't see anybody that is under 35. Perhaps that is just a cursory view and it might be indicative of the difficulties we have with employment in the State. But that is the cleft that I have at the moment about - I mean I don't have any problem agreeing with the issue because it is clearly an oversight and it needs to be fixed. It is just the issue of the operative date and/or how that is to be applied to junior employees since 1 August to 16 December.

PN52

THE DEPUTY PRESIDENT: Mr Paterson?

PN53

MR PATERSON: Thank you, Deputy President. In principle I support the submissions of Mr Watson in terms of the change to the award and Mr Baker to the operative date issue. There is one matter just probably for information and put rather as a question. Not understanding the full history of this that when we were - before we were doing an MRA process to an award and we had agreed that a junior rate should be a percentage of the classification, then they would get the percentage increases of the MRA as the total wage. Clearly the wording in this award didn't do that. So I suppose I am asking the question as to whether there hasn't been some oversight further back which in effect has denied juniors the benefit of the MRA process.

PN54

I mean maybe that is a matter for another discussion on another day and given that this is remedying an oversight and I clearly accept that Mr Watson's on the rates, and I did some checking of his sums and I don't have any problem with the proposal he is putting up, so I just raise that as a matter the parties may need to look at in the future. I would support the variation to the award with either the proviso or an operative date of today's date.

PN55

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

OFF THE RECORD

[11.30am]

RESUMED

[11.45am]

PN56

THE DEPUTY PRESIDENT: Let the record show that we have had a bit of discussion about the mechanics of achieving the desires and aspirations of the applicant in this matter. And it is my understanding that the parties don't wish to put any further submissions, but they have indicated during the course of the conference that they are going away to have a look at drafting a new clause to be inserted in the award which may or may not contain a proviso clarifying the situation if payments have been made in the intervening period. It is also my understanding that the parties will have private discussions in respect of that and they will forward to me by the end of the week a new document in the form of a consent draft order. Is that the understanding of the parties?

PN57

MR WATSON: It is, Deputy President.

PN58

MR BAKER: Yes, sir.

PN59

MR PATERSON: I confirm that.

PN60

THE DEPUTY PRESIDENT: Good, right. Thank you. This matter is now adjourned, thank you.

ADJOURNED INDEFINITELY

[11.50am]

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LIST OF WITNESSES, EXHIBITS AND MFIs

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EXHIBIT #TCCI4 DOCUMENT, ON OR AFTER 1 AUGUST 2002PN30