

HEARING RECOMMENCED

COMMISSIONER: Will we take the same changes in appearances? Is that correct. Right. Mr Baker?

5 MR BAKER: Thank you, sir. When this matter was last before you, you will again recall there was some confusion over the issue of which principle we should proceed upon and in particular, Mr Fitzgerald put forward the proposition that clearly this allowance should in fact be proceeded with under the CPI adjustment process.

10 To that end, I then went and did some homework on the movement of the CPI in so far as it related to the tool allowance provision. You may recall, sir, that I sought to increase the tool allowance from \$9.00 to \$9.60, which did bring about some extensive debate on the application of the Wage Fixation Principles and how they should be applied.

15 As I indicated, I went and did some homework and I, as a consequence of that, did in fact write to Mr Fitzgerald on 6 February in the following terms:

Dear Bill,

20 *You are right, the CPI adjustment applied to the tool allowance does result in a higher figure. By multiplying the CPI to the base figure of \$9.00 a new amount of \$10.34 is achieved. I've not added the December quarter figure to it. [because at that stage I hadn't had it]. When the claim is back before the commission I will adjust the claim from \$9.60 to \$10.30. In fact, I will adjust it to \$10.40.*

25 MR FITZGERALD: Do you want to go further?

MR BAKER: No, no. \$10.40. This will make it actually the highest tool allowance paid to engineering trades persons anywhere in Australia.

MR FITZGERALD: If you're successful.

30 MR BAKER: Well, you argued on the last occasion, Bill, it should be adjusted by the CPI. The CPI -

COMMISSIONER: Mr Baker, are you submitting to me or Mr Fitzgerald? I'm quite happy to let Mr Fitzgerald decide it, quite happy.

35 MR BAKER: I beg your pardon, sir. This matter was last adjusted in September 1990 and since then, up until the end of 1996-1997 year, the percentage adjustment had been 15.3% and varying in the years since then from 1991 through to 1997, the CPI adjustments in Hobart

for the relevant figures are 2.8%, 0.3%, 1.6%, 1.7%, 4.8%, 2.1% and 2% until June of last year.

5 There is a further adjustment to be made from the June to December quarters of last year and, as I've indicated, if you multiply those figures out, a figure well in excess of the \$9.60 is achieved.

10 Now the significance of the matter before the commission is that there are other tool allowances of the commission which have relevance to the Metal and Engineering Industry Award as far as the tool allowance situation is concerned and the difficulty I have in prosecuting this claim is that, as I previously indicated, to accede to the claim, we will finish up with a tool allowance that is in excess of the national standard, not marginally but quite substantially, and there are other allowances which will follow because of any decision that arises out of this matter that's before you today.

15 Having said that, you would recall my comments that I made on the last occasion when I was before the commission about this award should be viewed as an industry award, as opposed to a section of the industry. Now, I'm not too sure what Mr Fitzgerald wants to do today with the matter. I haven't heard from him, other than his fax which I received last night, which indicated that he needs to refer the figures which I've dug out to his economist who can verify them and I'm prepared, quite obviously, to do that but I am sure that any assessment of the movements in the Hobart CPI from September 1990, when this matter was last varied until the present time, will in fact produce a figure in excess of 15%.

COMMISSIONER: Thanks, Mr Baker. Mr Fitzgerald?

MR FITZGERALD: Do you want the AWU to respond first?

COMMISSIONER: Oh, I'm sorry. Yes, thank you. Mr Flanagan?

30 MR FLANAGAN: Thank you, commissioner. Again, commissioner, it appears this is a matter which needs to be further discussed between the parties. Obviously, from the AWU's point of view, we are willing to embrace a \$10.40 tool allowance, despite the fact that that exceeds the national standard but we do believe it is appropriate for further discussion to occur and we'd seek that the matter be adjourned with a date close to the commission's list for a report-back with the opportunity for the parties, if they have reached agreement, to have the matter moved forward to a consent hearing. If it pleases the commission.

COMMISSIONER: Thanks, Mr Flanagan. Mr Fitzgerald?

40 MR FITZGERALD: Again, one of my frustrations, I suppose, is how these matters proceed and how Mr Baker does, with due respect to Mr Baker, how he seeks to progress these matters because I think there's

a right and a wrong way of doing things and I think on this occasion Mr Baker has proceeded in the wrong way.

5 I'm happy to present this letter and I think I should present it because Mr Baker's indicated that he's written it to me but it doesn't in any way assist us. In the last paragraph, which I didn't particularly appreciate and it doesn't make for good relations with the union and if Mr Baker wants to progress in a sensible, businesslike manner, I suggest he refrain from comments like this. The last paragraph says:

10 *You may advise your members accordingly (particularly the part where you could have settled for \$9.60).*

I have a comment which I can describe that as but I will refrain from that. I think Mr Baker will know what I mean. But, certainly, if he wants to make those sorts of comments then you can forget about cooperation, I'd suggest.

15 COMMISSIONER: Is that the first exhibit from you, Mr Fitzgerald?

MR FITZGERALD: I think it is.

COMMISSIONER: **EXHIBIT F.1.**

MR FITZGERALD: In good faith, on the last occasion, I raised the issue of how cost-related allowances could be progressed in the terms of the principles. Again, it's not a matter of just simply saying it can be progressed. You've got to apply it in terms of the principles. They are not guidelines, they are principles. They are ways in which indicate how matters can be progressed. Now, principle 10.1.1:

25 *Existing allowances which constitute a reimbursement of expenses*
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And I interpose there, that's quite clearly - this allowance is a reimbursement of expenses. It's not a work-related allowance and I continue to quote:

30 *- incurred may be adjusted from time to time where appropriate to reflect the changes in levels of such expenses.*

Now, since the last hearing the only contact Mr Baker has had with me or the TCCI is that letter which absolutely does nothing to assist the situation. Again, out of courtesy, and I think I can indicate that it was in good faith trying to respond to the way Mr Baker's trying to progress these matters, I faxed Mr Baker in respect to this matter and I said, and I quote - this is yesterday. Okay, it was very much close to the hearing date today but, again, I don't think the onus is on us to chase it up. It's up to Mr Baker to proceed and come back to us but the letter which we've presented as F.1 says absolutely nothing. In respect to the facts, I said to him yesterday:

Tool Allowance

5 *I understand since the last hearing you were going to supply us with CPI figures particularly the datum point when the allowance were last adjusted. I am happy to receive that so that our economist can verify the figures.*

10 What we have is absolutely nothing. It's just a broad assertion that there's been some CPI adjustments which would justify his now claim for \$10.40. Now, there's no figures before you. We've had no opportunity to verify those figures. It may be that we could have agreed to them but without any figures before us, we don't know when it was last adjusted or when Mr Baker contends it was last adjusted. There's just nothing before the commission.

15 If the commission granted it on that basis then, quite clearly, we'd be looking at our position. There must be some material before the commission, before the commission can determine it.

20 Again, I simply say - I agree with Mr Flanagan, that the most sensible course is for Mr Baker to produce those figures, allow us an opportunity for our economist to check them and then we may in fact be in a situation where we can agree to it but we can't take on face value his contention that in fact he's behind the eight-ball and he can justify an increase of \$10.40.

25 Without appearing to be an obstructionist, we're quite happy to receive that information and make a considered judgment and determine a position. That's the way claims normally are progressed but that's not the way Mr Baker's progressed in this instance. If it pleases.

COMMISSIONER: Thanks, Mr Fitzgerald. Mr Baker?

MR BAKER: I would have thought that the last time the tool allowance was varied is a matter of public record. It's quite easy to ascertain the last time it was varied.

30 In so far as what has been put to you, the parties are due to respond to you on another matter in a couple of weeks time and I would be hopeful at that time to present to you an agreed position. If not, I would argue that we will press the claim for \$10.40.

35 COMMISSIONER: Thanks, Mr Baker. Before I do adjourn this matter, until the - we may as well do it at the same time, if there's agreement, 9.30 on 13 March. I will say that I accept Mr Fitzgerald's submissions, if not entirely, almost entirely. It is up to you, Mr Baker, to produce the evidence not only as Mr Fitzgerald says, to himself, but to the commission as well. In other words, an exhibit, showing the
40 moves, the changes, resulting in the end amount.

That being the case, I'll leave it with the parties again and if you're not able to produce agreement on this, perhaps the one before is a little bit more complicated but on this one, it's a sad commentary on all of us, I would say.

- 5 This matter is adjourned until 9.30am on 13 March. Thank you.

HEARING ADJOURNED