

**TASMANIAN INDUSTRIAL COMMISSION**  
Industrial Relations Act 1984

T No. 5574 of 1995

**IN THE MATTER OF** an application by the  
Automotive, Food, Metals, Engineering,  
Printing & Kindred Industries Union to vary  
the Shipbuilders Award

re restructuring of award

T No. 6095 of 1996

**IN THE MATTER OF** an application by the  
Tasmanian Chamber of Commerce and  
Industry Limited to vary the Shipbuilders  
Award

re restructuring of award - Clause 17 -  
Holidays with Pay, Clause 18 - Hours of  
Work, and Clause 24 - Overtime

PRESIDENT

HOBART, 26 February 1996  
continued from 1/2/96

**TRANSCRIPT OF PROCEEDINGS**

Unedited

PRESIDENT: Well, could I have appearances in relation to the second matter called please.

**MS J. THOMAS:** JENNY THOMAS, appearing for the Tasmanian Chamber of Commerce and Industry Limited.

5 PRESIDENT: Yes. Thank you.

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

PRESIDENT: Thank you, Mr Baker.

10 **MR T. BENSON:** TONY BENSON, Mr President, appearing for the Construction, Forestry, Mining and Energy Union, Tasmanian Branch.

PRESIDENT: Very good. Thank you. I note the appearances in the other matter remain the same. There are no changes. Very good.

Now, as to how we proceed with the second matter that's been called, 6095, what are your submissions on that? Ms Thomas?

15 **MS THOMAS:** I thought it might be appropriate, Mr President, if the parties took you through those items that are agreed and we dealt with those and then subsequent to that, we will move to the other application. Just as a procedural point initially, I'd like to amend that application, T6095, to delete the reference to clause 17 Holidays With Pay and the words appearing under there, because that matter is now agreed.

20 PRESIDENT: Is it?

**MS THOMAS:** Yes, it is.

PRESIDENT: Right. So delete clause 17. I take it there'd be no objections from the other parties to that application.

**MR BAKER:** No, sir.

25 PRESIDENT: No. Right. Well, the application is amended in that fashion. Now, what are your views about proceeding, Mr Baker and Mr Benson?

**MR BAKER:** I would suggest, sir, that both matters be dealt with simultaneously, that the matters be joined and we proceed through them.

30 PRESIDENT: Just join them. But do we need to get rid of these two outstanding matters before we get to looking at the package?

**MS THOMAS:** No.

**MR BAKER:** No, I don't think so. We just move through them. Those matters which are agreed, we fix those up and then -

PRESIDENT: As we come to these, we will deal with them?

35 **MR BAKER:** I think so.

PRESIDENT: Is that it?

**MS THOMAS:** Yes, that would be an acceptable approach.

PRESIDENT: Okay. Well, we'll join the two applications and proceed in that manner. Thank you. So, where does that leave us?

MR BAKER: With a lot of paperwork actually.

PRESIDENT: Yes. Very good, Mr Baker.

5 MR BAKER: I think perhaps if I may defer to Ms Thomas. She has provided the paperwork this morning. I might indicate, sir, that there has been a series of discussions between us and there seems to have been an enormous amount of paper flowing on my fax machine. In fact, I had to give Jenny a tingle and ask her exactly where we were at. I wasn't sure what was going on.

10 PRESIDENT: I'm surprised you were able to get anything into your fax machine, Mr Baker - the amount of stuff that's been coming out of it to me recently.

MR BAKER: Well, you see, we've got a new machine, sir, and I had to try it out.

PRESIDENT: Yes, all right. Ms Thomas?

15 MS THOMAS: Following the last hearing of this matter on 1 February before you, Mr President, the parties to the Shipbuilders Award have met to discuss a range of issues put forward by the chamber as part of the third stage of the current award restructuring exercise in the Shipbuilders Award.

20 As a reminder, the first stage involved the insertion of a new classification structure for those employees employed under Division A of the award, as it then was, and the second stage involving the removal of the clerical classifications from the award.

As a consequence of our discussions, I can advise the commission that the parties have agreed to a number of amendments to the award and I have provided to your associate a copy of those agreed matters which would form the first exhibit.

PRESIDENT: Yes. Which one do you want to deal with first?

25 MS THOMAS: It is titled Shipbuilders Award and that follows then with Clause 8 - Wage Rates.

PRESIDENT: Is this virtually all one document, is it?

MS THOMAS: There are three pages to the first exhibit.

PRESIDENT: All right. Is this your first exhibit in this matter, can you remember?

30 MS THOMAS: I think it might be.

PRESIDENT: Okay, we'll call it T.1.

35 MS THOMAS: Okay. The first item in that exhibit clarifies the matter of the hourly dunnaging rate to be paid to employees. It deletes the final paragraph of subclause (f) of clause 8 and inserts what the chamber and the parties believe are simpler words and it makes it clear, especially in item (ii) that the amount for annual leave loading results in an hourly amount rather than a weekly amount as it does under the award at the moment. So, the parties are agreed on the form of those words and I think you'd agree that the form of words are an improvement of what appears there currently.

40 PRESIDENT: Yes. Well, it certainly looks as though it should be simpler. So, that accommodates the whole of clause (f)?

MS THOMAS: Not the whole of clause (f).

PRESIDENT: What's this? Just in addition?

MS THOMAS: Yes. That's in addition to the hourly rate.

PRESIDENT: The paragraph starting, 'In addition - ?

5 MS THOMAS: Yes. It effectively amends that.

PRESIDENT: Yes. Okay. And that's agreed?

MS THOMAS: Yes, it is agreed.

PRESIDENT: Very good.

10 MS THOMAS: We then move to Clause 9 - Amenities. That is simply reflecting the new name of the legislation which now applies, which is the Workplace Health and Safety Act 1995. So, that is merely an administrative type amendment.

PRESIDENT: Yes.

MS THOMAS: And the same for Clause 16 - First Aid Equipment. Once again, the name of the relevant legislation is corrected to its new title.

15 PRESIDENT: Okay.

MS THOMAS: In terms of Clause 17 - Holidays With Pay. The parties have agreed to insert a facilitative provision which will allow an employer and an employee to agree that an alternate date may be substituted for any of the holidays with pay prescribed in subclause (a). This is a fairly common provision and the provision also makes clear that where work is performed on the alternate day, the overtime rates in subclause 20 24(c) of the award will apply.

PRESIDENT: Okay. You will tell me, Mr Baker and Mr Benson, if you've got any objection to these words, won't you?

MR BAKER: Yes, certainly.

25 PRESIDENT: Good.

MS THOMAS: The next item sees the deletion of the current Right of Entry provision and replacing that with fairly simple words that really refer the parties to Section 77 of the Industrial Relations Act 1984.

PRESIDENT: Yes. Very good.

30 MS THOMAS: In terms of the Superannuation provision, the parties have decided to replace the current provision which tends to be worded in terms that are now outdated and the first two, for example, the superannuation contribution equivalent to 3% of ordinary time earnings - replacing that with the provision that is substantially, if not 35 totally, in accordance with the federal commission's superannuation test case decision.

You'll see that the first paragraph (a) - that is picked up directly from the superannuation test case decision. We have included in paragraph (ii) an additional industry superannuation fund, the Construction and Building Unions Superannuation Scheme established by Trust Deed. That is an agreed matter and Mr Benson might be

able to provide you with further documentation to satisfy you that the fund complies with relevant ISC standards.

PRESIDENT: Yes. That would be very helpful.

5 MS THOMAS: Going further through the provision, it basically reflects what is already in the award in one way or the other. It still maintains a definition of ordinary time earnings and provides for employees to seek an exemption should they so wish.

10 They are the matters agreed between the parties and as they are in my submission, concur with the requirements of the structural efficiency principle and the public interest requirements of act, operative from the date of your decision. If it pleases the commission.

PRESIDENT: Very good. Thanks, Ms Thomas. Mr Benson, do you want to provide me with what information you can about the Construction and Building Unions Superannuation Scheme?

15 MR BENSON: Yes, Mr Commissioner. I tender this document. If that doesn't suit the commission's requirements, there's no problem with providing any further evidence.

PRESIDENT: Yes. Is this your only copy?

MR BENSON: It is, Mr Commissioner. It came through on the fax two minutes before I got here.

20 PRESIDENT: Yes. Well, if you would just bear with me for a moment. So when was the fund established, do you know? Is it an old fund?

MR BENSON: It is, Mr President. Probably somewhere about 1984.

25 PRESIDENT: Yes. I was just interested in the approval of trusteeship goes to this group called United Super Proprietary Limited and that company is approved as a trustee for the purpose of the act to be the trustee of the Construction and Building Unions Superannuation Fund.

MR BENSON: That's correct, sir.

PRESIDENT: I don't know that that in itself automatically makes the fund an approved fund, although I'm sure it is. I'm absolutely positive it is, but I don't know if this documentation establishes that. I don't think we've got much difficulty -

30 MR BENSON: Any further evidence required, Mr President -

PRESIDENT: Yes. I might be in touch with you, Mr Benson, but I really don't think we need a great deal more since the fund is recognised in other awards of the commission.

MR BENSON: Thank you, Mr President.

35 PRESIDENT: All right. Thanks very much for that. So, no further comments in relation to those agreed matters. Everybody is happy with them and I don't have a problem with them.

Now, the other matters. Ms Thomas?

40 MS THOMAS: Okay. The TCCI would like you to arbitrate on two items which remain outstanding as at today's date. The TCCI, as part of the award restructuring

negotiation, sought the inclusion of two further facilitative provisions in the hours of work and overtime clauses and that is reflected in the application that I made to you, Mr President, and I might further amend that application by providing the detail of our claim, which is in a single page that I have provided to your associate, headed 18. Hours and at the bottom, 24. Overtime.

PRESIDENT: Very good. Do the other parties have copies?

MR BENSON: Yes, Mr President.

PRESIDENT: Is there any objection to the application being amended by inserting this information in them. Mr Benson?

MR BENSON: Mr President, the CFMU has had constant contact with the TCCI with regards to this matter and only last Friday evening, we sent through another fax with regards to another proposal. We received no reply with regards to that, as yet.

PRESIDENT: But do you have any objection to the application being amended in this form? I'm not talking about the award being amended. It may go through the formality of getting Ms Thomas' request to have her application amended to include this detail. You've no problem?

MS THOMAS: No problem, Mr President, no, no.

PRESIDENT: Okay, well your application is amended in that form then. Thanks, Ms Thomas.

MS THOMAS: Increasingly, facilitative provisions are being recognised as a means of making awards more relevant and better suited to the needs of individual enterprises. They affect the organisation of work and therefore the efficiency of enterprises covered by an award. In support of this statement the insertion the insertion of facilitative provisions into awards is one of the measures identified in the wage fixing principles which, when implemented, are intended to improve the efficiency of industry.

And if I could refer you to the structural efficiency principle, Mr President, as it now appears in the wage fixing principles. The commission provides that the structural efficiency principle provides a framework through which it is intended that the parties to an award should cooperate positively in a continuing review of that award with a view to implementing measures to improve the efficiency of industry and enterprises and provide employees with access to more varied fulfilling and better paid jobs. The measures should include but not be limited to - and on the second page it refers to the insertion of facilitative provisions in relevant clauses of the award.

The full bench further states in its decision that accompanies those principles at pages 22 and 23 that: the introduction also informs the parties that the structural efficiency principle still has significance for the purpose of continuing to restructure awards to make them relevant to industry. The structural efficiency principle will be retained as a continuing reminder to the parties of the important issues to be addressed in all deliberations on award and indeed agreed agreement changes.

Although the Shipbuilders Award presently contains a number of facilitative provisions, the TCCI has identified two further key provisions which we submit comply with the spirit and intent of the structural efficiency principle in that they will provide much needed flexibility in how the award is be practically applied at the enterprise level.

The award if varied will continue to provide the standard award condition and a framework within which agreement can be reached at the enterprise level.

Now the first part of our application seeks to amend clause 18 by deleting the existing subclauses (c) and (d) and inserting provisions which will in effect extend from five hours to six the number of ordinary hours which may be worked before a meal break is taken.

5 It's probably a useful exercise, Mr President, if I take you through a comparison of the existing provision and what we are proposing.

PRESIDENT: Yes.

10 MS THOMAS: So in terms of subclause (c), what has happened here is that that is to be deleted, and in effect what I've done is to I think divide it into two. So the hours of work - so subclause (c) will now read: The hours of work prescribed by this clause shall, except for the unpaid meal breaks specified in subclause (d) of this clause be continuous on each day.

15 Now I've taken the information relevant to the meal break out of that subclause and established a new subclause (d) - Meal break, which will contain all information that is relevant to the meal break.

It goes on: A meal break of at least 45 minutes but no more than 60 minutes shall be allowed to an employee after five hours continuous work. The meal break shall be taken between the hours of 11.00 am and 3.00 pm.

20 That information is within the existing provisions. There may be some slight wording changes but they're merely for clarity and ease of reading rather than anything else.

It then goes on to say: Provided that where there is agreement between the employer and the employee the meal break may be reduced to 30 minutes. That is an existing -

PRESIDENT: Just before you go on there -

MS THOMAS: Yes.

25 PRESIDENT: - the - yes, so you're virtually saying that the first break or the meal break must take place after five hours work.

MS THOMAS: Yes. That is the effect of the existing provision at the moment.

30 PRESIDENT: Is it? I mean this - the way - your clause seems to say it has to be, and it can't be earlier - when you put 'shall' in there - a meal break of 60 shall be allowed after five hours work. That implies that you must work five hours regardless before you can take a meal.

MS THOMAS: Yes, that's - that's - if you look to subclause (d) of the existing provision that makes it quite clear that that is the case; that no employee shall work for more than five hours without a break.

35 PRESIDENT: No, but that's not what you're saying in your new one.

MS THOMAS: It's saying it in a different way.

PRESIDENT: But if I could make the suggestion, it appears to be saying you've got to work five hours before you can get a meal.

MS THOMAS: Oh yes, I see.

40 PRESIDENT: Do you think it's possible that it could be interpreted that way?

MS THOMAS: Yes, definitely.

PRESIDENT: And that's not really what you're intending.

MS THOMAS: No, it's not. Obviously the meal break can be taken in any time up to five hours.

5 PRESIDENT: Between 11 and three - yes.

MS THOMAS: Yes.

PRESIDENT: And so the two sentences sort of conflict with each other.

10 MS THOMAS: I guess that word 'after' will have to be changed to reflect the fact that it can be taken, so long as it's between 11 and three, before even five hours continuous work. Yes. But the maximum - I think the award is the maximum will be five hours.

PRESIDENT: Yes. Yes well that's always - pretty much always been the case hasn't it?

MS THOMAS: Yes. Yes. So I'm quite happy to look at a form of words.

15 PRESIDENT: Yes, if you could - otherwise I think the two become a little bit - create an ambiguity there.

MS THOMAS: Yes. I mean if you endorse the principle of what we're putting to you then we'll look to a form of words that will achieve that.

PRESIDENT: Yes, okay.

20 MS THOMAS: So the first proviso there is one that already exists in the award where the meal break may be reduced to 30 minutes.

PRESIDENT: Yes.

25 MS THOMAS: And the second proviso is the one that we have inserted and it states: That provided further, where the employer and the employee agree, an employee may be required to work for more than five hours but no more than six hours at ordinary rates of pay without a break for a meal to meet the circumstances of the work in hand.

30 I think the words at the end there - 'to meet the circumstances of the work in hand' imply that it would not always be a requirement that the employee be asked to work for more than five hours; it will be by agreement and there may be instances where an employee can see the logic of perhaps working for an additional 10 to 15 minutes to achieve whatever he is doing at any given time. But of course it will be by agreement too, so that's where the protection is for the employee.

35 PRESIDENT: Yes, so how do you see that - I mean I know this is the problem with facilitative clauses, but how do you see that agreement taking place in a hot - fairly hot set of working conditions where people are working hard to get a job out of the road, and the employer wants it out of the road, and the employee is working hard to meet a time and the employer says, will do you agree to work an extra 15 minutes ordinary rates - how do you get the formal agreement to a situation like that?

40 MS THOMAS: I mean with facilitative provisions, it will always be - not always - but it will be difficult to establish that there has been a formal agreement, because as you say, the agreement might, in this instance, been reached on the spot, if you like.



PRESIDENT: Mm.

MS THOMAS: And it will be up to the parties if it's ever tested to be able to demonstrate that that agreement was reached. Now a prudent employer will perhaps have some sort of pro forma which he keeps as part of the wages records to indicate that the employee did agree on that day to work an additional 15 minutes. The objective of facilitative provisions is not to make the award overly prescriptive -

PRESIDENT: Yes.

MS THOMAS: - but to defer these issues to the parties so that they can be practically applied at the workplace. Because if we come up with a prescriptive form of words then we don't introduce the flexibilities that we're trying achieve.

PRESIDENT: Yes. Look I can see they're working quite well in other areas; I'm just a little bit concerned about how this one might apply when -

MS THOMAS: I mean if you're - if you're particularly concerned with this provision, I have directed it to the individual level where the employer and the employee agree. But if your preference is for a provision that first requires that agreement be reached between the employer and the majority of employees at an enterprise that that facilitative provision will apply, then I'm quite happy to insert those words.

PRESIDENT: Oh we'll hear from the other side on that.

MS THOMAS: Because that adds a double - that does add the double protection if you like.

PRESIDENT: Yes.

MS THOMAS: And then that could be more formally recorded and kept as part of the wages records.

PRESIDENT: Yes, all right.

MS THOMAS: Now if we go on, this provision here is - basically picks up what is contained in subclause of the current provision. It is worded differently, but it also excludes - well I'll read it out: An employee shall not be required to work for more than five hours without a meal break of at least 30 minutes - I'm just looking at those words and I think that is what is contained in the award - except where overtime is worked for a period of one hour or less after an employee's normal finishing time - that is the existing provision - or the employer - and I haven't changed this - the majority of employees concerned reach agreement in accordance with paragraph one of this subclause.

So -

PRESIDENT: Oh, you were -

MS THOMAS: Yes, I was - I was thinking -

PRESIDENT: - anticipating.

MS THOMAS: - I was thinking that way earlier and then I changed my mind because I feel that this type of facilitative provision is one that can work at the individual level. But yes - so I was in two minds so to speak.

PRESIDENT: Now what do you reckon - what do you reckon it ought to be then?

MS THOMAS: I think the agreement can be reached between the employer and the employee. It merely goes to the taking of a meal break.

PRESIDENT: Yes, so you'd want your -

MS THOMAS: The employer and the employee.

5 PRESIDENT: - subpara (b) to be changed.

MS THOMAS: Yes, it will be the employer and the employee concerned agree - or reach agreement.

PRESIDENT: All right, well for the purposes of the exercise we'll take out 'majority of'.

10 MS THOMAS: Yes.

PRESIDENT: And that's then your current application.

MS THOMAS: Yes, that's right.

PRESIDENT: The employer and the employee concerned. So really, your subpara (2)(a) and (b) in your submission is the same as (d) except that it's got this -

15 MS THOMAS: The addition of (b).

PRESIDENT: - the addition of the provision for the -

MS THOMAS: Mm.

PRESIDENT: - the agreement and working more than five hours without a break.

MS THOMAS: Yes. And finally - this is quite hard work this -

20 PRESIDENT: Oh, I don't know - you ain't seen nothing yet.

MR BAKER: No.

MS THOMAS: That's very true. Why are you looking at Phil Baker like that?

25 Now let me have a look there. Oh, the purpose of this provision is to make it quite clear in the award what happens if an employee does work beyond five hours without having a meal break. The award doesn't make that clear at present, in my submission, and it merely says that, subject to those exceptions which I've identified just above there, if the employee is not given a meal break after five hours work then they'll be paid in accordance with the overtime rate specified in clause 24(a) of the award until  
30 such time as a meal break is allowed. So that is, in my submission, an improvement on the award.

PRESIDENT: That's a plus for the employees you say.

MS THOMAS: And the employers too, because it clarifies what should be the case.

PRESIDENT: Yes. Yes, all right.

35 MS THOMAS: And in relation to our proposal for clause 24 - Overtime, firstly I propose that the existing subclause (g) of that clause be deleted. In my submission it serves no useful purpose, and as I've just clarified what is to happen if an employee

does work in excess of five hours with a meal break, that current subclause (g) in there is unnecessary.

PRESIDENT: Oh, I see.

5 MS THOMAS: Because as it stands now, it makes that statement but then it doesn't go on to say well what happens if that does occur.

PRESIDENT: Yes. Virtually what you've done, you've -

MS THOMAS: Moved subclause (g) back to the hours clause.

PRESIDENT: - taken (g) - 24(g) from overtime and put it in the hours clause -

MS THOMAS: Yes, to the meal break.

10 PRESIDENT: - effectively.

MS THOMAS: And then going on from there, it's insertion of a new subclause (j) which will read: Where the employer and the employee agree, time off in lieu of overtime at the penalty equivalent may be made - and I'm missing a word there - may be paid - or hold on - may be taken - that's the word missing there - may be taken in lieu of overtime payments. If the time off in lieu of overtime is not taken at the mutually agreed time, payment at the overtime equivalent will be made in accordance with normal pay procedures.

PRESIDENT: And so what did 'J' say before?

20 MS THOMAS: Nothing - this is a new provision. The award presently doesn't provide for the taking of time off in lieu of overtime.

PRESIDENT: Right. So then you'd have to renumber.

MS THOMAS: Yes, with the deletion of subclause (g) that might become something else. And the references of course in clause 18 - Hours, to subclauses - I think it's - no, in one of those agreed items we referred to subclause 24(c) - that might need to be changed as a consequence to when things are renumbered - I'm not sure.

They are substantially our proposals for the award. I don't know whether you've got any further questions at this point before I go on with supporting submissions.

PRESIDENT: I'll just go through your new 'J' for a second. What form of - will the time off take? Will it be at time for time or -

30 MS THOMAS: At the penalty equivalent.

PRESIDENT: - or penalty equivalent?

MS THOMAS: Yes.

PRESIDENT: It will be penalty equivalent?

MS THOMAS: Yes, it will be penalty equivalent.

35 PRESIDENT: I think that ought to be expressed there more clearly. Oh, it is.

MS THOMAS: Yes.

PRESIDENT: It is - yes. Yes, all right. I understand what your application is.

5 MS THOMAS: Yes. Okay. Right. Similar provisions to those proposed by the chamber were identified by the federal commission in its August '89 National Wage Case decision in Print H9100. And I've just provided you a copy of that page of the commission's decision, and the commission in this decision -

PRESIDENT: We'll mark this T.2.

MS THOMAS: Mr President, I might just clarify the exhibit numbers; exhibit one was the agreed amendments.

PRESIDENT: Exhibit 1 was -

10 MS THOMAS: Oh, yes and that one - that's right. No, I'm with you now.

PRESIDENT: - were the agreed ones. The exhibit - or your page dealing with hours and overtime changes were incorporated in the application.

15 MS THOMAS: Yes, thank you for that. Okay, in this decision, the federal commission had become concerned that conditions related matters hadn't really been addressed by the parties to date and they go on to state at the top there where it's highlighted - and these hieroglyphics aren't mine, so - but it appears at an appropriate point at the top there that -

*The measures to be considered should include but not be limited to:*

- and the third point there - or the fourth point there is -

20 • *ensuring that working patterns and arrangements enhance flexibility and the efficiency of the industry.*

It goes on:

25 *In relation to the last measure in particular we are of the view that many awards have scope for a less prescriptive approach and, without limiting the opportunities for innovation, the following are some of the measure which are appropriate for consideration.*

- the second point being -

• *compensating overtime with time off;*

- and the third point -

30 • *looking at the flexibility in the arrangement of hours of work,*

- and they give examples of how that might be achieved. And I would argue that those provisions that we've put up today fit comfortably within those measures identified by the federal commission back in 1989.

35 And in fact those types of provisions have flowed extensively both federal and state awards with the Shipbuilders Award having some flexibility built into it but not enough in our submission.

And this - the decision - the 1989 decision of the federal commission was subsequently adopted by the Tasmanian Industrial Commission in their State Wage Case of October of '89.

5 And in further support of our application, the meal break provision the TCC is - TCCI - is proposing albeit in different words, was one of a number of facilitative provisions inserted into the federal Metal Industry Award by consent as a consequence of the award modernisation flowing from the commission's decision referred to earlier. And the meal break provision is also to be found, for example, in the state Metal and Engineering Industry Award and the Automotive Industries Award.

10 The time off in lieu of overtime provision is fairly common in state awards, and I can cite for example the Community Services Award as an example of that.

In conclusion, Mr President, the proposed amendments are submitted to you for approval. It is our submission that the measures contained within our application conform with the requirements of the structural efficiency principle. The amendments  
15 will allow greater flexibility in how the award is practically applied thus contributing to improved efficiency and productivity at the workplace level.

And the TCCI further submits that the public interest requirements of section 20 of the act are clearly met by our application which seeks to improve the efficiency and productivity of the shipbuilding industry through provisions that provide benefits to  
20 both employers and employees. If it pleases the commission.

PRESIDENT: Ms Thomas, do you have any precedent in relation to your time off in lieu?

MS THOMAS: In terms of an example of a provision? Yes, I do actually. It's in my file there and I can provide a copy of that to you.

25 PRESIDENT: What award is that?

MS THOMAS: It's the Community Services Award.

PRESIDENT: I thought you referred to the Community Services Award in relation to meal breaks.

MS THOMAS: No, in terms of the overtime in lieu provision.

30 PRESIDENT: Oh, I'm sorry. I'm sorry. Any others?

MS THOMAS: I have to admit, Mr President, that when I initially researched this matter I was looking for provisions in awards that provided for time - for time - overtime in lieu and I couldn't find too many. And so at that stage I hadn't identified many awards. The only thing I could identify was time at the penalty equivalent. And  
35 so at that stage I wasn't looking for those, so - they were so numerous that I gave up the task.

PRESIDENT: They were numerous were they? All right - thank you. Yes - Mr Baker.

40 MR BAKER: Sir, in respect of my submission, I really don't have too many difficulties with what Ms Thomas is putting forward today. I have some continued difficulties with the form in which it's being put before the commission.

In relation to the overtime provision, if I may turn to that one first - the new proposed clause 24 - I have no difficulty with that provision because I have been the author of instituting it into other awards of this commission, but I really raise the issue of its

continued application in the workplace as we see today, particularly with the concept of a penalty equivalent for time off. It's becoming a situation which is becoming less and less used because of the tightness that has involved - enveloped - the community - the - the workplace. And while, as I indicated to the commission, I have no difficulty with the provision, I have a difficulty in its application because I see that whereas Ms Thomas talks about flexibility in the award, it really becomes a form of words which simply go into the award which become meaningless.

PRESIDENT: Why do you think it's dropping out of favour in terms of practical application?

MR BAKER: I think, sir, it's a - it's consistent with things like the rostered day off; that these were provisions which were instituted - as Ms Thomas rightly refers to - the '89 National Wage Case decision and they are issues which went into awards at that time and they became popular, but then of course industry then had to restructure, reset itself and as a consequence of that, where there were a dozen tradesmen or a dozen clerks or whatever there was at the time there's now half a dozen.

PRESIDENT: Mm.

MR BAKER: And each one of those has a particular job to do and as a consequence of that the issue of the RDO suddenly becomes a major - a major impediment with the employer in the way in which these small workshops indeed operate and likewise with the time off in lieu provision. And the difficulty that I've had with the particular time off in lieu provision as it has existed or continues to exist in other awards in this commission is that it simply doesn't apply. The employee says, okay, look I want some time off, but the time off is never taken.

PRESIDENT: So what are you saying then? They do the overtime on the basis they'll get time off but they never get the time.

MR BAKER: Well they never get the time off. Now Ms Thomas' application actually addresses that by saying that, you know, if it's not - if you don't actually - it doesn't say that - but the employee was really obliged to nominate a time when they are going to take the time off and if the time off isn't taken then the penalty rate is applied. Now I think that sounds good, looks good, but whether it will actually apply or not is pretty much up in the air.

PRESIDENT: But it could give - it could give a group of people an opportunity to do something if they could make it work.

MR BAKER: Oh, yes - yes.

PRESIDENT: And in effect nobody misses out at the end of the day - they get some - they get compensation for the time worked if - in one form or another.

MR BAKER: Yes - that's quite correct - yes.

PRESIDENT: Yes.

MR BAKER: So that's - that's really my comments in relation to that provision. It's an issue which is one of those things which has evolved. I mean obviously we've had provisions where people have taken time off in lieu for years.

PRESIDENT: Yes.

MR BAKER: And provisions like which has been proposed by the TCCI and indeed proposed by ourselves gives recognition to those happenings which occur every day of

the week. And I can recall, sir, back before the days of the 38 hour week and RDOs where companies used to actually knock off Friday at lunchtime and all go home and they worked an eight and a half hour day to achieve it in contravention of the award. So things will continue to occur.

5 So that's really - I just raise that as a - as not so much an issue but an observation.

PRESIDENT: But you've got no real ideological or any other objection to it other than the fact that it mightn't work in practice.

MR BAKER: No, that's right. And I've expressed that Ms Thomas previously. Insofar  
10 as the other bits and pieces are concerned I really - again, it really becomes an issue of  
how Ms Thomas has actually worded the provision. And you drew attention to the after  
the five hours concept in (d)(i), but I would also raise the second proviso where it talks  
about the employer and the employee agreeing and then the employee is required. Now  
15 I'm not sure how you could have an agreement and then you have - and then there is  
a requirement imposed upon the employee. I understand what Ms Thomas is alluding  
to in the wording but I think that needs to be sort of tidied up. And likewise of course  
that again applies to (b)(ii) with the reference back to it. But I think that just - that  
needs to be sort of again tidied up so that it actually expresses what in fact is found in  
20 other awards of this commission in relation to working on beyond the five hour  
notional limit as it applies. And I say notional, sir, because again it's certainly my  
experience that again there is already a degree of flexibility in the workplace, whether  
it's this industry or other industries, that if there was a job at hand to be done at the  
conclusion of the five hours then it's done, although I might add a rider I suppose, sir,  
that's not always the case.

But really, sir, that's really my comments. It's just a question, I think, that the  
25 wording needs to be -

PRESIDENT: So have you got any ideas about how it might be better worded?

MR BAKER: No, sir, I haven't. I mean this is - this is another late addition -

PRESIDENT: Yes.

MR BAKER: - which I've received. And I mean that as no disrespect to Ms Thomas  
30 because as I've indicated, sir, there have been numerous faxes or letters flowing  
backwards and forwards and I'm not too sure where we sort of finally got to with them,  
but I really think that needs to be rewritten so that it reflects what is sought, and that  
is, that the break is taken after five hours, but you don't have to work five hours before  
you get a break, and likewise, if you're going to work on after the five hours then that's  
35 by an agreement and you're not required to do it.

PRESIDENT: Mm.

MR BAKER: Although there are awards of this commission that in fact do require  
you in the event of a breakdown or emergency.

PRESIDENT: Yes. Yes, well I mean that - it's looks from point of view - and I haven't  
40 asked Mr Benson yet - but from your point of view it would appear that there is every  
chance of some sort of agreed wording being developed in relation to that clause.

MR BAKER: Yes.

PRESIDENT: And in terms of the overtime suggested clause - I mean you're not  
really offended by it, it's just you're concerned that it will be used to any great extent.

MR BAKER: Yes.

PRESIDENT: Well so I don't - I'm not really certain whether you oppose it or -

MR BAKER: No, no, no, sir, I don't - I don't oppose it. I mean I - and certainly as far as the - I mean the extension from five to six hours - I mean I couldn't really stand here today and oppose it as I lodged the application to vary the Metal Industry Award, so -

PRESIDENT: Yes. I hear what you say and we might come back to those issues.

MR BAKER: Yes. Well just one last thing; in relation to the overtime clause 24 subclause (g) -

10 PRESIDENT: Yes.

MR BAKER: - I'd like to explore that with Ms Thomas because that's the first time it's - and I stand corrected - but I think it's the first time she's raised about deleting that clause (g) and the implications of it.

PRESIDENT: All right. All right, thank you. Very good. Mr Benson.

15 MR BENSON: Yes, Mr President. The CFMEU agrees with Mr Baker's stance on clause 18 - Hours. We share the same concerns obviously. As far as clause 24 - Overtime, is concerned, as I said earlier we sent a proposal through late Friday evening with regards to some concerns we had there. We thought we had a part agreement there but obviously we didn't. We now - we'd be prepared to negotiate with the other parties with regards to a tidying up of that, particularly in respect to the fact that if the time off in lieu of overtime is not taken at a mutually agreed time, there's no certainty of whether that mutually agreed time is agreed to at the time that the overtime is agreed to work or whatever at this stage -

PRESIDENT: Yes.

25 MR BENSON: - as far as we're concerned.

PRESIDENT: I follow that.

MR BENSON: Now what we what's-a-named - what we have sent through on Friday evening and we'd be prepared even beyond that to amend that, that if the agreed time off in lieu is not taken within 14 days payment at the overtime equivalent will be made. Now that's basically our position as far as that's concerned, Mr President.

30 PRESIDENT: Yes. All right. Well look, this is so close to a negotiated settlement I think I've got to - I must refer you into conference to see if you can pick up some agreed words on that.

MS THOMAS: Could I -

35 PRESIDENT: Yes, Ms Thomas.

MS THOMAS: - comment on that, Mr President. Mr Benson did in fact forward some proposed additional words to the overtime provision and I did fax back to Mr Benson a response to that, that we wouldn't be able to entertain the words that he had proposed. I think if we are agreeing in principle on what I've put forward today, then I think -

40 PRESIDENT: Well I think there's an agreement -



MS THOMAS: In principle.

PRESIDENT: - to the general principle - it's the detail of it that you've got to come to grips with just to make sure there are no loose ends there.

5 MS THOMAS: Yes, I mean it might be appropriate that we do attempt to agree on some further words but I think at some stage it might be useful if you help - assisted -

PRESIDENT: Yes.

MS THOMAS: - the parties in that drafting exercise.

PRESIDENT: I'd be delighted - yes, certainly. And I don't know whether you want to - want me to join you in the conference process immediately or -

10 MS THOMAS: I would certainly prefer that. I think we've exhausted the discussions today.

PRESIDENT: Have you really.

MS THOMAS: We really have - yes. That's from my point of view anyway, and that - yes, I would really like your participation in that.

15 PRESIDENT: Yes, all right. Mr Benson?

MR BENSON: Mr President, the whats-a-name - the CFMEU would in fact seek an adjournment to discuss these matters further. We do feel that there is some common ground there but we would seek an adjournment to a later period to completely reach agreement.

20 When we first came - or myself - when I first came to the commission with regards to the Shipbuilders Award there were nine matters or proposed amendments put up. We had problems with quite a few. We now have agreed to seven out of those nine. We feel there is some common ground there, and as I say, we would seek an adjournment to ensure that those other two matters are agreed to -

25 PRESIDENT: What will you be -

MR BENSON: Pardon?

PRESIDENT: What would you anticipate doing then in terms of the negotiation process - going away to seek further instructions or would you be in a position to negotiate with the parties immediately?

30 MR BENSON: Well both really.

PRESIDENT: You need instructions, do you?

MR BENSON: Yes, sir - yes, sir.

PRESIDENT: Yes, thanks, Mr Benson.

MR BENSON: Thank you, Mr President.

35 PRESIDENT: Mr Baker.

MR BAKER: Well I'm easy, sir. I don't - I'll leave it in your hands.

PRESIDENT: Yes. Ms Thomas.

5 MS THOMAS: Mr President, you made it quite clear at the last time we were here before you, that you would arbitrate on any outstanding matters today and on the basis of those words that is why I have proceeded as I have - that is why we conducted our discussions and I sent faxes here, there and everywhere. I wouldn't like to see this matter delayed. I think the sooner we can inject these flexibilities into the award the better and I really think that the TCCI has exhausted, you know, the negotiation process.

10 We are in agreement on principle and I just think it's merely a matter of the form of words that we insert into the award.

PRESIDENT: Yes, well I mean I don't like to ride roughshod over an organisation that's seeking extra time even though I agree with you I did indicate that I'd arbitrate, but you've got so close to the words and I just wonder what else - you know why arbitrate it when you're so close.

15 Mr Benson, can you tell me a little bit more about what it is that your organisation is objecting to in the two provisions? I mean you did say you agreed in great - to a great extent with Mr Baker who has indicated that he's, you know, that close.

MR BENSON: With respect, Mr President, that was with regards to one clause.

PRESIDENT: Right, so you - so you would be able to negotiate on the hours clause?

20 MR BENSON: I believe so, Mr President.

PRESIDENT: All right. Well tell me specifically what it is that you object to in the overtime clause.

25 MR BENSON: Well as it stands at the moment, Mr President, as I said, there's nothing there within the clause as it is at this stage of the game that states that when the overtime will be taken. It doesn't - there's nothing specific there. We would - we propose that a time limit be put in there. I did fax through a proposed provision to TCCI with regards to that and they seem to think it was too prescriptive but it was -

PRESIDENT: Yes - and that was the one about a 14 day.

MR BENSON: No, sir - no - no, sir.

30 PRESIDENT: Right.

MR BENSON: But -

PRESIDENT: And you don't think you'd be able to tell me about it if you got forced into an arbitration on it?

MR BENSON: Pardon?

35 PRESIDENT: You don't think you'd be able to tell me what it is you wanted if we go to arbitration?

MR BENSON: No, not really, sir.

PRESIDENT: No. So what would you be then putting in opposition to Ms Thomas' application.

MR BENSON: Well merely, sir, that the fact that we are so close that I think given the opportunity to meet once again, we can put something that all parties will agree with.

PRESIDENT: Well why can't you talk about that now in conference?

5 MR BENSON: Well I - I do require advice from my - my people Mr -

PRESIDENT: But if the appoint - sorry - I mean I don't want to pursue you on it too far, Mr Benson, but if you are able to make a suggestion by fax to the TCCI as to what you wanted, why can't you -

MR BENSON: Well, Mr President -

10 PRESIDENT: - discuss that with us in conference?

MR BENSON: - at this stage, Mr President, we have a problem with some of our people covered under the award with regards to the proposed amendments by TCCI. We have discussed the matter with them and we've put up several proposals now with regards to addressing these matters. The last proposal we put through was on Friday evening; we've received no reply with regards to that. Our concern at this stage of the game with the overtime clause is, as I say, that no-one knows with regards to the content of the clause there as to when overtime has been agreed to be -

PRESIDENT: Yes, look I understand that and I think we could work out an amicable arrangement on that.

20 MR BENSON: Yes, we still do have problems with the clause 18 - Hours, with regards to it's our belief that - that the - particularly - the particular clause itself opens the way up for a minimum of six hours work to be performed before a meal break is taken. Our understanding is that if that meal break is taken from the lunchtime period, there is two hours, that that goes into an overtime period that is then paid for at the normal rate of pay. We find it a little difficult to come to terms with our understanding in that regard particularly in light of the commitments to the award that says that no changes will be made that financially disadvantage anyone covered thereunder.

30 PRESIDENT: Yes, well Ms Thomas has already indicated that she agrees with the proposition that I expressed that perhaps that provision could be read to mean that you have to work - have to work five hours before you get a meal and is prepared to change the words in that provision.

MR BENSON: In light of your comments then, Mr President, the CFMEU has no objection to - to going into conference now. -

35 PRESIDENT: Yes, all right. Well -

MR BENSON: - and try and work something out.

PRESIDENT: - let's - let's do that. Let's go - let's go into conference and see how far we can take it. It would be nice to be able to get this thing out of the road. See how far we go.

40 MR BENSON: Thank you, sir.

PRESIDENT: All right, well we'll resolve into - into conference, thank you.

**INTO CONFERENCE**

PRESIDENT: Yes, well thank you very much for a very worthwhile and productive session. Ms Thomas, would you like to tell us the results of our activities?

5 MS THOMAS: Yes, firstly, Mr President, I would like to echo your - your thanks for what was a very productive session this morning. I believe we now have an agreed form of words for both the hours provision and the overtime provision. And what I'll do is just read through those provisions in their entirety to make sure that the parties are all coming from the same angle, if you like.

Subclause (c):

*The hours of work prescribed by this -*

10 PRESIDENT: This is clause 18 - Hours - yes.

MS THOMAS: Clause 18 - Hours - yes. Subclause (c).

*The hours of work prescribed by this clause shall, except for the unpaid meal break specified in subclause (d) of this clause, be continuous on each day.*

Subclause (d) - Meal Break at paragraph (i):

15 *A meal break of at least 45 minutes but no more than 60 minutes shall be allowed to an employee after not more than five hours continuous work. The meal break shall be taken between the hours of 11.00 am and 3.00 pm.*

*PROVIDED that where there is agreement between the employer and the employee, the meal break may be reduced to 30 minutes.*

20 *PROVIDED further where the employer and the employee agree, an employee may .... work for more than 5 hours but no more than 6 hours at ordinary rates of pay without a break for a meal to meet the circumstances of the work in hand.*

Paragraph (ii):

25 *An employee shall not .... work for more than 5 hours without a meal break of at least 30 minutes except where:-*

*(A) overtime is worked for a period of one hour or less after an employee's normal finishing time, or*

*(B) the employer and the employee concerned reach agreement in accordance with paragraph (i) of this subclause.*

30 (iii) remains as per the application - there are no changes there.

Terms of clause 24 - Overtime.

*Delete existing subclause (g) .... remains.*

And then it goes on:

*Insert a new subclause (j) as follows:*

*Where the employer and the employee agree, time off in lieu of overtime at the penalty equivalent may be taken in lieu of overtime payments. If the agreed time off in lieu is not taken within 28 days, payment at the overtime equivalent will be made. This payment is to be made in accordance with normal pay procedures.*

5 And -

PRESIDENT: Very good.

MS THOMAS: - those are the agreed provisions that I understand, Mr President.

PRESIDENT: Excellent, and you would be submitting that those amendments be included with the other amendments which have already been agreed -

10 MS THOMAS: Yes, that's right.

PRESIDENT: - and the same operative date?

MS THOMAS: Yes, operative from the date of your decision.

PRESIDENT: Yes.

MS THOMAS: If it pleases the commission.

15 PRESIDENT: Very good. Thank you, Ms Thomas. Mr Baker.

MR BAKER: I would concur, sir.

PRESIDENT: Very good. Thank you for your contributions. Mr Benson.

20 MR BENSON: Mr President, CFMEU is pleased to have been part of the restructuring of this award. We're very, very pleased after this fairly prolonged period of time, I suppose one might say, that agreement has been reached. We do note though that we will be monitoring the effects of clause 18 and -

PRESIDENT: That's in particular the extension to six hours of -

MR BENSON: That's correct, Mr President.

PRESIDENT: - work prior to a meal break?

25 MR BENSON: That is correct, Mr President.

PRESIDENT: Yes. Very good. Excellent. Thanks, Mr Benson, and -

MR BENSON: Thank you, Mr President.

PRESIDENT: - and you've no objection to the proposed operative date and that the proposals are by consent?

30 MR BENSON: No, sir.

PRESIDENT: Well done. Well thank you very much everybody for finally getting there after so long. I think we started this - this thing started back - was it - was it '92 this one or - yes. Mr Baker.

MR BAKER: Yes, sir, my colleague, Mr Harding and Mr Edwards from the TCCI commenced this exercise but didn't quite conclude it.

5 PRESIDENT: Anyway, you're still there and you've done it. Many thanks. Well the award will be varied in the manner sought and we'll get the decision out in fairly short order.

The matter is concluded.

**HEARING CONCLUDED**