

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No. 3929 of 1992

IN THE MATTER OF an application by the
Automotive, Food, Metals and Engineering
Union to vary the Automotive Industries
Award

re minimum rates adjustment and
restructuring of award

COMMISSIONER GOZZI

HOBART, 27 January 1995
continued from 21/12/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Any changes in appearances this morning?

MR P. TARGETT: Thank you, commissioner, TARGETT P.E. for the Tasmanian Chamber of Commerce and Industry, replacing Mr Flood.

5 COMMISSIONER GOZZI: Yes, thank you, Mr Targett. Mr Joyce or Mr Baker, who's going to take the lead? Mr Joyce?

MR JOYCE: If the commission pleases. Commissioner, what I might just do from the outset is to hand up today a further amended draft in this matter.

COMMISSIONER GOZZI: I've got the one that you sent me, Mr Joyce.

MR JOYCE: Indeed, commissioner, it's been one or two modifications from that.

10 COMMISSIONER GOZZI: Okay.

MR JOYCE: But it is largely the same. What I'd seek to do, commissioner, with your

COMMISSIONER GOZZI: Is that exhibit J.3 or J.4 - exhibit J.4?

MR JOYCE: I think it's now J.4, commissioner.

15 COMMISSIONER GOZZI: Exhibit J.4.

MR JOYCE: Commissioner, there's been one or two very minor modifications and unless you'd like me to, I'd like to take the commission straight to those modifications.

COMMISSIONER GOZZI: Thank you. Fine.

20 MR JOYCE: Commissioner, the first one appears on page 10. I have marked it on your exhibit.

COMMISSIONER GOZZI: Right.

MR JOYCE: And just for the record, what we seek to do is after the words - so this is wage group level 7, and after the word 'retail tradesperson or equivalent', if we could insert 'grade II'.

25 COMMISSIONER GOZZI: Right.

MR JOYCE: That is consistent with references throughout the document to the verbiage.

COMMISSIONER GOZZI: Very good.

30 MR JOYCE: Commissioner, if I could then draw your attention to page 11, halfway down, it's under (b)(ii) computer skill level 3, paragraph 2 - and if we could ask you to delete the four words 'graph previously prepared spreadsheet' and comma.

COMMISSIONER GOZZI: Very good.

35 MR JOYCE: Commissioner, if I ask you to turn the page, there will be four minor amendments to draft on page 12. The first one appears under (e) information handling skills, skill level 4. It's the second paragraph, and after the first line of the second paragraph, after the word 'from', we'd seek to insert 'internal and' external.

COMMISSIONER GOZZI: Right.

MR JOYCE: The next paragraph is paragraph (f) business financial skills, skill level 3. In the first paragraph, second line, we'd seek to delete the four words 'post transactions to ledger' and remove the semi-colon.

- 5 Under wage group level 4 - sorry level 8, in the preamble in the second paragraph, after the word 'retail tradesperson or equivalent', to insert the words 'grade 3'.

At the base of page 12, under the sentence headed '(a) clerical - clerical officer IV, the word 'national', if we could include 'ly', to make it 'nationally'.

COMMISSIONER GOZZI: Right.

- 10 MR JOYCE: On page 14, under the paragraph (f) - no, indeed, that has been withdrawn, commissioner, because that is the reason why we made the correction from page 12. So paragraph (f) on page 14 stays as it is.

- 15 On page 17, under 'junior employees other than apprentices', it's (ii), you'll find the junior rates there, commissioner, they have been varied, and the new rates are to be 145.90, 162.10, 202.60, 243.20 and 283.70.

- 20 Commissioner, that is the only amendments that the parties would seek to do today. Just before we commenced, my colleague, Mr Baker, from the AFMEU had advised that he'd had some brief discussions with yourself regarding the tool allowance. We'd seek perhaps the opportunity, either on or off transcript, to have perhaps a frank discussion regarding that matter. If the commission pleases.

COMMISSIONER GOZZI: Yes, thank you, Mr Joyce. Just with respect to the junior rates, why is the change there?

MR JOYCE: Commissioner, it would appear just to be a straight calculation.

- 25 COMMISSIONER GOZZI: Right. So the wage level that that arrived from hasn't changed.

MR JOYCE: No, commissioner.

COMMISSIONER GOZZI: No, okay. All right. Any discussion on those amendments? Is it by consent?

MR BAKER: Yes, sir, I have no objection to those at all.

- 30 COMMISSIONER GOZZI: All by consent. Well those variations will be made as requested, Mr Joyce.

MR BAKER: There is just one thing in relation - two matters in relation to the draft - and I meant to raise this issue with Mr Joyce when I spoke to him on the phone the other day, but it escaped my attention at the time.

- 35 In so far as wage rates are concerned for apprentices, there on page 18, there are in fact percentage levels given there, but there was no actual wage rate. On page 18.

COMMISSIONER GOZZI: Yes, I've got that.

MR BAKER: Yes. I think they ought to be consistent with how they appear under (b)(i) and (ii) for junior employees and the wage rate is actually spelt out. I think we

should take the opportunity and actually spell out what the wage rates are for apprentices.

COMMISSIONER GOZZI: Right. Well have you got them?

MR BAKER: No, sir, I haven't.

5 COMMISSIONER GOZZI: Forty two per cent of?

MR BAKER: Of -

COMMISSIONER GOZZI: Tradesperson level 1, is it?

MR BAKER: Yes, of \$413.50.

10 COMMISSIONER GOZZI: Well somebody's got a calculator there. We'll go off the record for a minute.

OFF THE RECORD

COMMISSIONER GOZZI: Thanks, Mr Targett. Mr Baker, those figures then? We'll just put those in.

MR BAKER: Yes, sir.

15 COMMISSIONER GOZZI: All right.

MR BAKER: The second matter which I would like to raise with you, sir, is the question of a tool allowance. Currently in this award it stands, and indeed in the draft, it stands at \$8.50 per week. I would propose, sir, that that be amended from \$8.50 to be \$9.00. And I do so, sir, on the basis that the matter was recently amended in the
20 Metal and Engineering Industry Award in the matter T.4635 before Commissioner Watling. And this was consistent with the Wage Fixation Principles. And I might indicate, sir, that the Metal and Engineering Industry Award was varied - the tool allowance was varied from \$8.30 to \$9.00 - on the basis that the increases arose out of
25 state wages cases of November 1989 and the stage wage case of 1991, which reflected CPI adjustments of 6 per cent and 2.5 per cent. The matter in fact was done by - it was a consent application by the AFMEU and the TCCI. And Commissioner Watling, in his decision, indicated this matter is endorsed by the commission as it conforms with the wage fixing principles, and specifically the principle relating to allowances.

30 Sir, it would be our request to the commission that the draft order be amended from \$8.50 to \$9.00 on that basis. Given that the scope of the application by the union was to restructure the award in its entirety, I would suggest to you, sir, that there is sufficient scope there to make that amendment. And given that it also, of course, sir, saves the time of the commission and the parties, indeed, if we were to actually have to set to and lodge a separate application to vary it by a mere 50 cents.

35 And that would bring then the tool allowance into conformity with the Metal and Engineering Industry Award, which really is sort of the state standard, I would presume, in respect of that matter.

And I've spoken to both Mr Joyce and to Mr Targett very briefly about the matter before the hearing, and I understand they will concur.

40 COMMISSIONER GOZZI: All right. What's the T number again of -

MR BAKER: It's T.4635.

COMMISSIONER GOZZI: Of ninety?

MR BAKER: Three.

COMMISSIONER GOZZI: Right. Okay. Mr Joyce and Mr Targett, no problems with that?

5 MR TARGETT: I have no problems with it, commissioner.

MR JOYCE: Commissioner, the TACC's position is that so long as the - it is consistent with the principles and the application, it is not a major point. The main thing is that we've got the - it's important that the parties have been able to come together by consent to have these significant matters done by consent.

10 Commissioner, once again for the record, the TACC have had discussions with the ASU regarding the clerical classifications. And as this matter was by consent the parties would just like to note for the record that this matter is specifically for Tasmania with no implications on the national level.

15 COMMISSIONER GOZZI: All right, thanks, Mr Joyce. Well the \$8.50 will be varied to \$9.00, and the application - or the draft will be amended, more precisely.

Look, we're going backwards and forwards at the moment. Is there anything further that you want to say at this point, Mr Joyce, or Mr Targett?

20 MR TARGETT: I only had one query, and the query arises purely and simply because I wasn't at the last proceedings, so I'm a little bit short on the information, from a memory point of view.

The award was varied for all levels up to level 6 with an operative date in November 1994. And level 7 and 8 will yet to be sorted out between the parties. They've now been sorted out and lodged by consent. I just raise a question as to the operative date of level 7 and 8. The reason I raise that is the parties certainly agreed to that operative date of November because they were able to be sorted out and put in place. As I recall -
25 or certainly from the information that's been provided to me, the question of the operative date for level 7 and level 8 was in fact not determined at the last proceeding.

30 It's my view, as the matter is now only - been able to sort out at this stage, I would propose that the operative dates for levels 7 and 8 be from the first full pay period on or after today's date. We certainly don't resolve from the agreed operative date for all levels up to level 6, as has been the agreed position in the past and put to the commission.

35 COMMISSIONER GOZZI: I don't think I've made any pronouncements about operative date, have I? It's the first - I mean, I can't recall whether it's been referred to me or not, but I haven't issued any decisions or orders. So any arrangements between the parties is between the parties.

40 MR TARGETT: Certainly, commissioner, the operative date in November, which I think, from memory, was the 22nd November - the first full pay period on or after, hadn't been issued as far as an order from the commission is concerned. But that was because of some delays that were occurring in getting the matter sorted out. There was agreement between the employers and the unions for the operative date of 22 November, but we did make comment at the last proceedings in relation to level 7 and level 8 because of them not being able to be finalised at that time.

45 MR JOYCE: Yes, commissioner, just to raise in support. Whilst the parties did become you at the previous hearing and the parties were in consent regarding

operative date, my understanding was the commission reserved their right. But they did note the fact that the matter was by consent from the parties. Certainly the TACC at the last hearing did foreshadow that with respect to 7 and 8, we would consider that if it's by consent at this hearing, then we consider that today would be the operative date for 7 and 8.

COMMISSIONER GOZZI: Mr Baker?

MR BAKER: That, sir, is I think consistent with the viewpoint which was put at the last hearing, that levels 1 to 6 would be operative from the 22nd November, given the fact that was when the agreement was reached. I believe, sir, you did make some comments concerning the operative, as Mr Joyce has pointed out.

COMMISSIONER GOZZI: Yes, I haven't read the transcript again, so - yes.

MR BAKER: But, sir, it would be our strong recommendation that the operative date for levels 1 to 6 be the 22nd November, which was the agreed position between the parties. And that the operative date for levels 7 and 8 be as from today's date - for first pay period on or after, I should say.

COMMISSIONER GOZZI: Okay. Mrs Dowd?

MRS DOWD: Mr Commissioner, everything that has been reported to you this morning is - in my understanding, is correct, in relation to the operative dates. I actually have a copy of the transcript of the last hearing, before me, and Mr Joyce did indicate that the operative date for grades 7 and 8 would be from the date that the actual hearing was before you with a consent position. That is before you today, so we would agree that the operative date for grades 7 and 8 should be the first full pay period on or after today's date.

And it was put before you at the last hearing that the consent position was for the 22nd November for grades 1 to 6. If the commission pleases.

COMMISSIONER GOZZI: Yes, thank you, Mrs Dowd. Anything further?

MR : I have nothing.

COMMISSIONER GOZZI: Well look, there's just a couple of comments I've got in respect of the draft, and the hundred per cent rate is at level 6. Now I should know but I don't - I can't recall it, but - but anyway, what is the qualification that an apprentice gets when he completes his - he or she completes the time required to undertake the apprenticeship? It is a trade certificate or is it a -

MR BAKER: Yes, sir, they receive a trade certificate.

COMMISSIONER GOZZI: Yes. Okay.

MR BAKER: Well actually - yes - or the equivalent there of through the changes in the next couple of years, but certainly - yes -

COMMISSIONER GOZZI: Yes. The hundred per cent - I can be assured then that an employee who holds a trade certificate at the hundred per cent rate is in fact a qualified tradesperson.

MR BAKER: Yes, sir.

MR JOYCE: Yes, commissioner.

COMMISSIONER GOZZI: Right. Okay. Now that's one aspect. And I notice too in the schedule that the hundred per cent rate, at the moment, is below what the hundred per cent rate is in a lot of other awards. It's \$413.50. Now what's the circumstance there?

5 MR TARGETT: Commissioner, the - there is a minimum rates adjustment process to apply to this award. The rates that have been put into the draft provided to you as J.4 are rates after the classifications are being broadbanded and the first and second minimum rates adjustment.

COMMISSIONER GOZZI: Right.

10 MR TARGETT: There is a further two minimum rates adjustments to apply and the dates that the parties have discussed in relation to those are the third MRA to apply 22 May 1995 -

COMMISSIONER GOZZI: Right.

15 MR TARGETT: - and the fourth MRA to apply 22 November 1995 and, commissioner, on the document that we've been utilising for our purposes, at the conclusion of the fourth minimum rates adjustment, level 6, the total weekly wage would be \$425.20 which is consistent with the one hundred per cent rate applying in other awards of this commission.

COMMISSIONER GOZZI: So that's - what's that in August?

20 MR TARGETT: November.

COMMISSIONER GOZZI: November 19 -?

MR TARGETT: 1995.

COMMISSIONER GOZZI: Right. That will take them to \$424.20.

MR TARGETT: That is correct.

25 COMMISSIONER GOZZI: Okay. Now what will be the impact of the first safety net adjustment in the - ?

MR TARGETT: Well the first \$8.00 has applied to this award past -

COMMISSIONER GOZZI: So effectively the December 1993 State Wage Case has been applied.

30 MR TARGETT: Has been applied.

COMMISSIONER GOZZI: Effectively, therefore, it's a rejigging of the award in respect of the first safety net adjustment coming out of the December 1994 State Wage Case.

MR TARGETT: That would be correct, commissioner, yes.

COMMISSIONER GOZZI: Right.

35 MR TARGETT: That would be all the impact would be.

COMMISSIONER GOZZI: So, all the adjustment - the \$425.00 is in fact where it will be -

MR TARGETT: Yes.

COMMISSIONER GOZZI: - at that time which fits in with that process.

MR TARGETT: That's correct, commissioner, yes.

5 COMMISSIONER GOZZI: Yes. Okay. Now, just another point, going to page 3 of the draft order, we're talking here about a clerical assistant adult entry level. Now it's an adult employee 21 years of age and over. Now, is that right? I mean, adults - age of majority these days is 18, isn't it? I mean can you describe somebody as an adult at 21? What happens to a person that is 18?

10 MR JOYCE: Commissioner, if I may. Once again the - both the Commonwealth and the numerous State Governments have their own very special way of dealing with junior employees. Certainly, for - with respect to voting I believe it is 18, however, a number of awards do make provision for junior employees, for example, beneath 21 years of age. Commissioner, at the moment I'd consider that that is directly consistent with not only awards of this commission, but also in other states throughout
15 Australia. I might just add for the record that in the future it is foreshadowed that the actual emphasis upon junior classifications will be less relevant because what will happen it will be skill based and therefore the actual description of a person of - according to their age would not be as relevant at that person's skill but I -

20 COMMISSIONER GOZZI: Yes. Well a lot of the junior age rates have been taken out of awards.

MR JOYCE: Indeed.

MR BAKER: Indeed they have, sir, yes.

COMMISSIONER GOZZI: Yes.

25 MR JOYCE: But I would say that, with respect, that at the moment that that would be consistent with this award -

COMMISSIONER GOZZI: Right.

MR JOYCE: - and in the future it may well be that these junior classifications or junior references may well be deleted.

30 COMMISSIONER GOZZI: So, when you go to your junior rates, you go up to age of 20, 87.5 per cent, right. Why are the percentage rates different between junior employees other than apprentices in the clause just above - ?

35 MR TARGETT: I think it's fair to say, commissioner, that that's probably an historical set of circumstances which, in the light of the numerous changes that are occurring in relation to training and junior and apprentices, it will probably sort itself out in time, but we've been loath to attempt to invent the wheel in advance of all of those changes that are occurring at a national level in relation to juniors and training and apprentices. I think we've merely continued the historical position of apprentices and juniors.

40 COMMISSIONER GOZZI: Right. Okay. And you've got the minimum wage - what's the effect on all this on the minimum wage?

MR BAKER: I'd suggest, sir, that it's irrelevant. I think if you couldn't actually find a classification for somebody within the structure, I think you'd be pretty hard pressed, quite frankly.

MR TARGETT: I wouldn't mind having a dib at that one myself actually, commissioner. I like this argument.

COMMISSIONER GOZZI: I tell you why I am asking the questions first. That might make it easier.

5 The thought that crossed my mind - you know, I don't want to be mischievous about it or anything at all, but the thought that - that ... crossed my mind was that now that the commission has the power to deal with award breaches - right - the thought that exercised my mind on this is what if somebody came along and said, well look, I am an adult and therefore I'm 18 years of age, or 19 years of age and I've been underpaid,
10 where does that argument take - take you?

MR TARGETT: I've actually had this debate within this jurisdiction before another commissioner -

COMMISSIONER GOZZI: Have you? Well, look, I didn't know that.

MR TARGETT: - and in fact I agree, it is a problem.

15 COMMISSIONER GOZZI: Mm.

MR TARGETT: And unfortunately I didn't bring a copy of the award with me. The only relevance in - in my argument - or my submission - for the minimum wage in any award of this commission continues to be only those awards that use the minimum wage for the purposes of annual leave loading and in those awards that continues to
20 use the minimum wage for that purpose I have been advocating that the actual annual clause should be varied to include it and the minimum wage clause should be deleted in its entirety for a number reasons, and I've actually concurred with another commissioner in another proceedings that the problem that can arise is arguably that rate can be used as the minimum rate for the purposes of enterprise agreements
25 under section 61 of the act. So I have no difficulties unless the annual leave clause utilises it from the minimum wage clause being deleted from this award if the commission believes it appropriate.

COMMISSIONER GOZZI: Yes, well that's the other aspect of it. I mean that's been one of the concerns hasn't it? I mean I'm in your hands. I just sort of - when I read it,
30 stumbled across it and the thought, you know, exercised my mind at the time.

OFF THE RECORD

COMMISSIONER GOZZI: Okay, well we've had some discussion about the minimum wage clause and it's my understanding if you look at that as - maybe in conjunction with the next minimum rates adjustment application in May of this year might be
35 appropriate.

The other query - and I do appreciate you sending me the draft order beforehand, Mr Joyce - I received it on Wednesday - reference to the Training Act in there - isn't that - is that agreement still registered under that Industrial and Commercial Training Act 1985 - that's on top of page 15? Is that still alive is it?

40 MR BAKER: Yes.

COMMISSIONER GOZZI: It is, is it? I mean the Training Acts have changed quite a bit.

MR BAKER: Yes. Well as I understand it, that act still is in a - is - is still relevant. There are certainly other parts that have changed and changed significantly, but I think - there's still a

COMMISSIONER GOZZI: Well -

5 MR TARGETT: As I understand it - as I understand it - and I don't profess to be an expert, commissioner, but the 1985 act has in fact changed substantially but they've all been - been via legislative amendments to the original act, so it's still -

COMMISSIONER GOZZI: It's still registered under that.

MR TARGETT: -as I understand it, remains still the 1985 act.

10 COMMISSIONER GOZZI: Well you might just have a look at that -

MR TARGETT: Certainly.

COMMISSIONER GOZZI: - for May as well. And I'll just make reference to that in the decision.

15 MR BAKER: One of the things of course that helps, sir, is if the government actually gave us a copy of the legislative changes they propose before they actually enact them.

MR TARGETT: I assume the transcript is not going to the government for the purposes of Mr Baker's soapbox.

COMMISSIONER GOZZI: You might have to raise that somewhere else, Mr Baker. Right. Is there anything else? I've got nothing further.

20 MR TARGETT: No, commissioner.

COMMISSIONER GOZZI: Okay, well look, in the circumstances I propose to endorse the draft order with the operative dates as agreed to by the parties and a decision and order in those terms will issue in due course. I'm not quite sure as to mechanics; I think it might have to be two orders - one from the - well, I'll think about that, but
25 anyway we'll it down in that - in that way.

So these proceedings are now concluded. Thank you very much.

HEARING CONCLUDED