

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s.63 application for determination of award interest

The Australian Institute of Marine and Power Engineers
(T.3871 of 1992)

**SHIPPING AWARD
MARINE BOARDS AWARD**

DEPUTY PRESIDENT A ROBINSON

HOBART 16 December 1992

Award interest

REASONS FOR DECISION

This matter concerns a reference by the Registrar concerning an application by the Australian Institute of Marine and Power Engineers (the Institute) for interest in the Marine Boards Award following the granting of registration by the Registrar¹ on 25 June 1992.

That part of the application which related to interest in the Shipping Award was dealt with in "Reasons for Decision" dated 15 July 1992.

I briefly dealt with the present issue on 3 July in Hobart but adjourned the matter following the raising of some objections by the Merchant Service Guild of Australia - Victorian and Tasmanian Branch (the Guild).

At that time I had indicated to the parties that they should consult at an appropriate level and report progress at a later time. Both organisations had agreed to this suggestion and the hearing was adjourned to a date to be fixed on that basis. Subsequently the Institute requested a resumption of the hearing.

However when proceedings resumed on 7 October 1992 these two parties had not, for one reason or another, properly consulted as to the reasons behind the Guild's objections, and in the result the Commission was requested to hear argument and arbitrate.

The Metals and Engineering Workers Union (MEWU) also participated in the hearing and after being afforded a brief adjournment Mr Hill advised the Commission that the Institute had indicated through Mr Matthews that it was

1. TR437 of 1991

prepared to give the MEWU a written guarantee that in the event interest was granted to the MEWU it would not seek to involve employees who are currently members of the MEWU, i.e. onshore employees, or employees occupying classifications traditionally covered by the MEWU. On this basis the MEWU did not object to the granting of the Institute's application for interest in the Marine Boards Award.

Mr Matthews confirmed on transcript acceptance of the position put by Mr Hill.

I return now to the case for the granting of award interest and the objections of the Guild.

Mr Matthews provided the Commission with copies of correspondence between the Institute and the Guild in relation to the failed attempt to consult with one another in accordance with the Commission's requirement and undertakings given to the Commission more than three months earlier.

He also advised that whereas he had earlier said the Institute had three members employed by Tasmanian port authorities further research revealed that the number of members was two.

The Institute provided an extract from the "Tugboat Industry Award 1974" which showed that both the Institute and the Guild (with others) were a party to that award at that time and the respondents included:

- . Marine Board of Burnie
- . Marine Board of Devonport
- . Port of Launceston Authority

A further exhibit was an extract from the "Tugboat Industry Award 1978" which demonstrated that the two employee organisations were still respondents at that time, as were the same, earlier nominated port authorities.

By 1980 the situation had altered somewhat in that the "Tugboat Industry Award 1980" covered the:

- . Marine Board of Devonport
- . Port of Launceston Authority

but no longer included the Marine Board of Burnie as a respondent.

And a further exhibit of the Institute showed that the Tugboat Industry Award 1982 applied only to the Marine Board of Devonport.

Mr Matthews provided copy of "Reasons for Decisions"² of 27 April 1987 which concerned a variation to the Marine Boards Award and illustrated the fact that the Tasmanian Trades and Labor Council exercised its statutory right to appear and authorised an officer of the Institute to appear as its agent.

2. T No 498 of 1987

Also tendered as an exhibit (X3) was a copy of a rule change of the Merchant Service Guild which the parties said has not been lodged with the Registrar and which related to alteration to certain eligibility rules in respect of that organisation.

And finally Mr Matthews relied upon the Institute's responsible industrial conduct in this State in the past and an assurance that to grant an interest in the Marine Boards Award would not prejudice the orderly conduct of industrial relations in the future.

Additional information provided included the fact that:

- . the Institute and the Guild may be competing to recruit present and future employees who are not union members but are employees of Tasmanian port and harbour authorities.
- . Both the Institute and the Guild (and others) have served a log of claims on eight Tasmanian port authorities and this was followed by proceedings in the Australian Industrial Relations Commission and the matter was apparently part heard before a Full Bench³.

Mr Groves for the Guild opposed the application on several grounds.

He said that there were a number of employees of port authorities and marine boards who have traditionally been covered by his organisation and believed there was the potential for conflict between the parties in relation to membership.

It was further submitted that the dispute before the Australian Commission should be determined on merit before this matter proceeds any further.

The Commission's attention was also drawn to the fact that the Marine Boards Award has been substantially restructured with the number of classifications within it significantly reduced and broadbanded. He said this is a new and complicating factor now that the question of award interest is being considered.

Decision

I have decided that given present circumstances I shall defer the granting of interest to the Institute at this time for the following reasons:

1. It is entirely unsatisfactory that over a period of more than 3 months the parties did not pursue more vigorously than they did the Commission's requirements and their undertaking that:

*"the parties should consult at an appropriate level
..."*

3. C Nos C No 21084 of 1990; 21641 of 1991; 21651 of 1991; 21665 of 1991 and 21682 of 1991.

Trade Unions have a responsibility to both honour commitments given in relation to such matters and self regulate to the maximum extent possible. Whilst the Commission accepts that it may arbitrate as a matter of last resort, other avenues should first be exhausted.

2. The applicant in this matter is also an applicant to the making of a Federal award in respect of the same area of employment and that application is in the process of being decided.

It is not without significance that the Guild is also an applicant in the same matter.

I do not believe any organisation should properly expect separate jurisdictions to concurrently deal with issues which are so essentially similar.

For these reasons the application is adjourned sine die.



Appearances:

Mr I Matthews for the Australian Institute of Marine and Power Engineers.

Mr M Hill for the Metals and Engineering Workers Union.

Mr S Groves for the Merchant Service Guild of Australia - Victorian and Tasmanian Division.

Date and Place of Hearing:

1992
October 7
Hobart