

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No 502 of 1986

IN THE MATTER OF an application
by the Federated Clerks' Union
for interpretation of the
Mining (Lead-Zinc) Award

re Rosebery Composite Allowance

PRESIDENT

HOBART, 1 October 1986

TRANSCRIPT OF PROCEEDINGS

PRESIDENT: Appearances, thank you.

MR FRY: If the Commission pleases, I appear on behalf of the Federated Clerks' Union of Australia, **FRY, D.J.** and with me is Mr **KEN HINDS**, a member of ours at E.Z. Rosebery.

PRESIDENT: Thank you.

MR SKINNER: If it pleases the Commission, I am appearing on behalf of West Coast Mines, Rosebery. My name is **DENNIS SKINNER** and appearing with me today is **JEFF MACKIE**.

PRESIDENT: Thank you, Mr Skinner.

Mr Fry, it's your application.

MR FRY: Thank you, Mr President.

PRESIDENT: Before you commence, Mr Fry, I take it you understand the ground rules that apply in matters of this kind?

MR FRY: I have endeavoured to establish them as clearly as I can. As this is the first occasion that I have appeared on this question of interpretation. I'm in the hands of the Commission, or your hands.

PRESIDENT: Well, if I think that you're transgressing, I'll pull you up. And Mr Skinner, I take it you also understand the ground rules?

MR SKINNER: I'm familiar with the ground rules of interpretation, sir.

PRESIDENT: Thank you. Very well. Now, thank you, Mr Fry.

MR FRY: I believe you have in front of you, (or should have), sir, a document relating to the actual matter.

PRESIDENT: Yes.

MR FRY: We are seeking to have your interpretation, sir, on a matter

MR FRY: going to the Rosebery composite allowance, which in the award, has 3 levels. Currently ... and I'm quoting from clause 35 of the Rosebery composite allowance which appears on page 56 of the document that the Commission distributed late last week, sir. I have a copy of it here if you wish.

PRESIDENT: Is that the consolidated ...

MR FRY: Yes.

PRESIDENT: Yes, thank you. I won't mark this as an exhibit, Mr Fry. It's simply an aide-memoire, thank you. But I guess it's an extract from no. 3 of '86, consolidation, is it?

MR FRY: Yes, I've provided the front page to this as well.

PRESIDENT: Thank you. Yes, proceed.

MR FRY: The Rosebery composite allowance is clause 35 of that award, sir, and it is divided into (i), (ii) and (iii).

(i) says for employees engaged on a contract or payment by result system. The amount is \$33.80 per week;

(ii) For other employees (non-tradesmen) \$38.90 per week; and

(iii) Tradesmen and equivalent \$43 per week. |

Then the last clause, Apprentices and juniors shall be paid the allowance in accordance with their percentage of the adult rate.

It is, (as the document you have before you tendered by the union) the union's contention that where a clerk is paid a rate equivalent to that of a tradesman, that the payment is defined in 3. shall likewise apply to clerks. |

The history of this composite allowance is somewhat clouded in

MR FRY:

confusion, inasmuch that when it was incorporated in the award, the Federated Clerks' Union were not involved at the Rosebery mine. There was a clerical structure in existence in the award that had been inserted at the insistence of the employer to avoid, what they perceived to be, a move by the union - the Federated Clerks' Union on a national basis - to rope a number of mining companies in Tasmania into a Federal award and to give them a basis for a 41 (1) (d) argument, they dragged this, as it was then, antiquated system into the award structure.

So, what went there and was never contested and what applied because the company also contended that any employee over 24 years of age who was a clerk, was not covered by the terms of the award as well. So, it had very limited application, if in fact it had application at all, in the minds of the employer.

From the time that the new structure went into the award in 1984, it was our belief that a clerk, because he or she received the equivalent rate to a tradesman, was entitled to that as specified in (iii) of clause 35.

We have attempted to have this matter clarified with the company. I have a document in front of me, sir, which is a letter to the company dated 25 September, 12 months ago. At that time we spelt out that the proposition I've just put to you, that the clerks were entitled to the higher rate and in fact we believed that from the time the award came into being, clerks had been receiving it. We believed it was an oversight.

The company's response to that was, that they were fearful of a flow-on to other tradesmen, or other people covered by the award. Our response was, whilst the current wage fixing Principles are in existence, if other unions wish to mount a case they

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FRY

MR FRY:

would be bound by those wage fixing Principles.

We are not seeking - the Clerks' Union is not seeking to circumvent the Principles. We are simply claiming what we believe to be an interpretation from you that would give to a clerk who receives a rate of pay equivalent to that of a tradesman as defined by the company and by the award the higher rate, which currently stands at \$43 per week.

There is little further that I can add to it at all, sir. As I indicated to you, the matter has been of discussion between the union and the company for more than 12 months now, and it has been that we've been unable to resolve it between us.

PRESIDENT:

Mr Fry, as you would know from the guidelines or the ground rules and they're no more than that, that the Commission published some time ago now that the President cannot concern himself with the merits of a matter. I can only have regard for what the award says and attempt to interpret a particular provision, either as it stands or if there is some difficulty, in the context of the whole of the award. Or perhaps there are other vehicles that one can call upon in order to arrive at what it was - the award maker intended. - And that can of course also embrace consideration of the reasons for decision given at a particular time if from the words used in the provision, 'under scrutiny' there is some ambiguity.

Now, after that rather long-winded explanation, I noted from your submission that you were putting to me that I should interpret the award in your favour because, (and I assume this) clerks, or some clerks are in receipt of a rate of wage that equates with or exceeds that of a tradesman.

MR FRY:

Precisely, sir.

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PRESIDENT - FRY

PRESIDENT:

Could you point to clause 35 and tell me where in that it is permissible to use that criteria, namely, the rate of pay applicable to an employee?

MR FRY:

Sir, in (iii) it says, `tradesmen and equivalent`. That is what we would say and we would contend and this is the crucial factor, sir, upon which we are before you today - the reason for your interpretation of what is `equivalent`.

Now, as I said, and I'm sure ... only too well, there is no transcript; there are no records of decisions; there were some records kept by the company at various stages purporting to be transcript - at various hearings at West Coast Mines over a long period of time, but really it's difficult to rely for accurate interpretation on what those records did or did not contain. Therefore, it really is a question, sir, - I'm not asking for merit. I'm asking for an interpretation of what you believe `and equivalent` is. We say it equates to a rate of pay.

PRESIDENT:

Yes. It's unfortunate in some respects that we can't go to merit, Mr Fry. I must confine myself to the ground rules. I did notice that the award contains a definition of a tradesman and that's at page 6, and I would wonder, Mr Fry, if the correct approach would be to look at the definition and say, well, that's a tradesman. Now, if there was another classification or there are other classifications that, for example are required to have the same kind of background - it might be a background in measuring, or drawing, or somebody making precision measurements, or more importantly, someone applying general trade experience.

Could it be argued that that is what the award maker meant by the word `equivalent` to a tradesman. I'm not putting that; I'm not saying that;

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PRESIDENT - FRY

PRESIDENT: that's not my finding but I'm putting it to you, that it might be arguable.

MR FRY: I agree with you, sir. I agree that that is an argument the company could logically run and that you could logically determine. I'm saying to you, sir, that we don't have too many clerks who define themselves in the terms of a tradesman but we do have clerks who, over a long period of time - and remember, the people who would receive the rate of pay for a clerk, would be an experienced clerk who would have learnt his or her craft on the job and quite often, with study - specialized study - off the job.

So, there are certain skills - although some people challenge me on this - there are certain skills clerks possess that no one else possess and for this reason - that there has been a comparison in certain awards and at certain points in awards between a tradesman and a clerk, at one point or another.

PRESIDENT: Yes.

MR FRY: The whole question is quite vague and open to interpretation. We had attempted to solve it by saying, our interpretation was that the equivalent meant, at a rate of pay. If it doesn't meant that, sir, I don't really know where else we can go to look for it.

You have drawn our attention to the tradesman - what a tradesman is defined in the award. If that be your interpretation, sir, so be it.

PRESIDENT: Well, that's not necessarily my interpretation. That's not part of my function to argue the E.Z. Company case. I am only trying to help myself, in a sense, Mr Fry, to get some assistance from you as to how I should go about determining what is meant by the deliberate, I assume, insertion of the word 'equivalent'.

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PRESIDENT - FRY

MR FRY: Yes. I think it might also be appropriate and I don't know this, I'm just making a blind question off the top of my head - it might be appropriate to ask the company at what rate they apply the higher rate to a tradesman. It may be that they pay it to a second class machinist; they might equate it to a welder third class, I really don't know.

PRESIDENT: No. That's almost getting to merit, I suppose. But no doubt the company could tell us what they understand the term 'equivalent' to mean.

MR FRY: Certainly the membership of our union, which is considerable at Rosebery, were of the opinion that from the time the award came into being, they were cognizant of the fact that there were 3 scales and our clerks and even people involved in calculation of pay, were of the opinion that that should be - the higher rate should apply to clerks where a clerk's rate applies to that of a tradesman.

PRESIDENT: Yes.

MR FRY: So, really I can't advance any more argument for you, sir, because I just don't know and I don't know the history of it.

PRESIDENT: Yes. It's very difficult for us all, Mr Fry. I, glancing at the award before when I came in, and I note there are various types of clerks. There is a 'clerk other' and there is a 'skilled clerk' ...

MR FRY: And a general clerk, as well.

PRESIDENT: And a general clerk. Does one assume that a person who is not a skilled clerk, is therefore an unskilled clerk?

MR FRY: I hope not, sir. That was a title that was inherited from the Electrolytic Zinc Award, sir, and it was defined to give - in that area originally - the people who work and

MR FRY:

who are defined as `clerk other` are the more the runners and the couriers and the straight copy typist. Someone who is doing nothing more than operating a copying machine - the very basic functions of clerical work. Whereas a `general` becomes - and I'm talking in generalities now, sir - the `general` as it applies refers more to the secretarial side of operations and certainly that was one of the decisions of the then Deputy President Holden, that the secretarial people became general clerks. There were some others but that's the broad interpretation of it.

Switchboard attendants after a period of years became a general clerk. Skilled clerks were those of a specialist nature so defined, who include people like paymasters, purchasing officers, and workers' compensation clerks - people working in specialized areas. That's the three broad groups, though there is some crossing of the barriers, but that's the very basic group, `Clerk other` - very basic routine functions; secretarial and support staff for general and specialized clerks became `Clerk skilled`.

PRESIDENT: Yes, it's a term that I would understand in the blue collar context but it's a little difficult to fathom in the white collar context.

MR FRY: It's another of those definitions that I inherited when I became secretary of the union and whilst I would liked to have changed it over a period of time, I haven't had a great deal of co-operation from either Rosebery or from Risdon.

PRESIDENT: I do take it from what you're saying though, Mr Fry, that your members are in receipt of some allowance.

MR FRY: Yes, they receive, sir, currently for 'other employees', \$38.90.

PRESIDENT: (ii).

MR FRY: Yes.

PRESIDENT: Would it also mean that a tradesman who happens to be a contract employee would receive the 33.80 and not the \$43 ...

MR FRY: It does, sir.

PRESIDENT: ... because it makes no difference there. It is an employee ...

MR FRY: No, I am informed that a person who works underground on a contract system receives (i) rate of pay.

PRESIDENT: Yes. Tradesmen at (iii) and all others - would that include juniors too, I presume ... other than apprentices receives (ii).

MR FRY: 'Apprentices and juniors shall be paid the allowance in accordance with their percentage of the adult rate'.

In other words if you were an apprentice tradesman (presumably that's what apprentices are), you would receive it at the higher allowance.

PRESIDENT: Mr Fry, under the terms of the Act, the Commission can interpret an award

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PRESIDENT: retrospectively or prospectively. How would you have me interpret this award, if it is in favour of you?

MR FRY: Sir, as I stated to you in my earlier submission, it was our belief that our clerks who are entitled, or were entitled, to the higher rate should in fact have received it from the time the award came into being. Now, that would be some more than 2 years of retrospectivity; that would be the optimum position, sir.

Knowing the history of retrospectivity out of this and all other authorities in Australia, I don't hold too high a hope of success in that claim.

PRESIDENT: Yes, of course it is arguable in interpretation matters that if the President is going to make a declaration that that is what the award means, it might be said that he should say, 'Well, that is what it has always meant'.

MR FRY: What it has meant.

PRESIDENT: Yes.

MR FRY: I would be delighted if that were the case in this instance, sir.

PRESIDENT: Having said that, I don't think I've yet done one that way.

MR FRY: I don't believe you have, sir.

Could I just briefly have 30 seconds to ask my colleague if he has anything he would like to add to it?

PRESIDENT: Yes, Mr Fry.

...

MR FRY: I think that's about all I have to add.

PRESIDENT: Well you will have the right of reply anyway.

MR FRY: Thank you.

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PRESIDENT: Mr Skinner.

MR SKINNER: Thank you, Mr President. I am in a position, fortunately, to at least throw some light on the intent of the Rosebery composite allowance and why these differentials came about.

I would like to refer to an order and tender into evidence - an order of July 1973 by Commissioner Heagney - the Rosebery Adjustment Allowance.

PRESIDENT: We'll mark that as Exhibit A.

MR SKINNER: During this period there was a considerable amount of upheaval at Rosebery and one reason for the perennial disputation, was the Rosebery composite allowance, as it's now called, or the Rosebery adjustment allowance, as it was then called.

Tradesmen asserted that they were not receiving due recognition in relation to their indentured period and their margin for skill. As a result of that, Commissioner Heagney, handed down a decision so dated in which he differentiated:

"1. All Tradesmen" were to receive at that time, \$6.90.

"Section 4 - Engine Driving

2. Classifications 1 (a) (i) through to (iv)" were to receive \$6.90.

"3. Classification 13 - Power Station Operator at Rosebery Mine" was to receive \$6.90.

"All other classifications in Section 4 to 11 (inclusive)" were to receive \$5.10.

"Mining and Milling
Operations Surface (General)
and Clerks (Sections 1, 2, 3
and 12)" were to receive \$3.00.

MR SKINNER:

The intent of the Commissioner when handing down this decision was to clearly differentiate. I contend that the differentiation, or that component, is primarily a certificate allowance. The people that were receiving \$6.90 at the time, and this is where the construction on the word 'equivalent' is significant. ||

Tradesmen obviously have what we call a ticket - the vernacular. Engine drivers at that time were also ticketed. Subsequently, they went onto contracts at some future date and are now back on what we call the lowest Rosebery composite allowance. Power station operators at the Rosebery mine are still on the highest Rosebery composite allowance and they are ticketed. They possess a D.L.I. ticket and they also have to adhere to an Australian Standard, so I'm told. And all other classifications were slotted into what the Commissioner at the time considered to be the appropriate remuneration level. |

Referring to section 35 of the Consolidated Award, it's our contention that there is no ambiguity there. 35(1) is quite specific:

"People in receipt of contract payments shall be paid \$33.80."

35(2) simply states:

"All other employees (non tradesmen) shall receive \$38.90."

35(3) tradesmen and equivalent shall receive \$43 per week." ||

The equivalent there is not referring to what wage rate you receive as to determine whether or not you're entitled to that Rosebery composite allowance. The equivalent there, as I hope I've thrown some light on, is primarily, if you have obtained some

MR SKINNER:

certification.

Now, a referral to the literal definition of 'equivalent', I don't think will throw much light on it. The 'Collins English Dictionary', does state that 'equivalent' means equal of interchangeable in value, quantity or significance. It may be of assistance to highlight interchangeability.

Mr Fry has suggested, or indeed contends that the emphasis to be placed on equivalent is quite simply one of margins. I would in turn suggest, that if that was a logical approach, well, then all employees in composite allowance (1) would be entitled to that as well, or considerably more because they earn considerably more.

So, I respectfully suggest that that line of argument is somewhat short-sighted.

PRESIDENT:

If then, Mr Skinner, a clerk could produce documentary evidence that he or she held a clerical certificate or some other approved qualification from a college or a university, do you think in those circumstances that would meet the criterion of the ticket?

MR SKINNER:

Sir, indeed, and they would be remunerated accordingly under section 11- Subject allowance which reads:

"Clerical employees including juniors classified herein who have passed examinations in an approved course of study mutually agreed to be of value to the company shall, when such learning is applied in the normal duties of the employee concerned, be paid the following additional allowance:

\$1.40 per week for each certificate of business studies subject.

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PRESIDENT - SKINNER

MR SKINNER:

\$1.40 per week for each
diploma course semesta unit."

PRESIDENT:

Yes. Quite so, Mr Skinner, but when one goes to the preamble to the Rosebery composite allowance, we see that it's basically intended to compensate for disability and site allowances.

Now, it seems to me that if there was merit in - if there was substance in using as the yardstick - the fact that, say, an engine driver has an engine driving ticket and he may have some D.L.I. ticket - examinable or otherwise - but if he does then, okay he meets the requirement for tradesman or equivalent. Then why wouldn't a clerk who holds some kind of certification be included as well if that is the only criteria?

PRESIDENT: I mean a power station operator, I take it is really only a - I don't mean it disparagingly - is really only an engine driver, isn't he?

MR SKINNER: Yes, sir, but ...

PRESIDENT: And an engine driver isn't a tradesman.

MR SKINNER: No, sir. All I can articulate to you, is my understanding of the intent of the original order. As Mr Fry has already alluded to, documentation at that period is somewhat sketchy and indeed there were no reasons for the decision in relation to this order.

PRESIDENT: Yes.

MR SKINNER: It is only through secondary evidence and hearsay, that I have been able to establish the rationale for these differentials and in my opinion and indeed it's our contention, that that rationale does stand up to scrutiny when you have a look at the order and see the common denominator flowing through.

PRESIDENT: Oh, I can understand that. I can understand that ...

MR SKINNER: Now, whether that is equitable or right, it's not for me to ...

PRESIDENT: But you believe that that was why these differential rates were struck. Why, for example, classification 13. Power Station Operator at Rosebery Mine, included with the all-tradesman rate and classifications 1(a)(i), (ii), (iii) and (iv) ... I'm unsure ...

MR SKINNER: Yes, sir. They were ...

PRESIDENT: They're engine driving ...

MR SKINNER: They are winder drivers, from memory.

PRESIDENT: Mine winder drivers, yes.

MR SKINNER: Yes. Even today, they have to renew

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MR SKINNER: their ticket every 12 months, from memory. They have a degree of responsibility, obviously because they are carrying people et cetera.

PRESIDENT: Yes. I'm familiar with that classification. Clearly I take your point. 5. of Commissioner Heagney's order, clearly set out a lesser rate for clerks and others.

Well, now somehow or other over the years, there's been some kind of a change, hasn't there ...

MR SKINNER: There has, sir, and the reasons for that change, I unfortunately cannot throw much light on, other than there has been an upward movement, in that clerks and all general servicemen are now on the Rosebery composite allowance 35(2).

PRESIDENT: Yes. So, those who fell into mining and milling operations surface general and clerks in sections 1, 2, 3 and 12, have moved into what is now (ii).

MR SKINNER: 35(ii).

PRESIDENT: And again we have no published reasons for that?

MR SKINNER: Not that I was able to establish. I'm sure there are some in the records, but I wasn't able to locate them. Primarily, the problem is one of documentation in the Wages Board. It would appear, unlike the Commission where you list a matter for hearing and are confined to that hearing - I'm not familiar with the Wages Board system - but it would appear that in the Wages Board you could have listed a matter for hearing and then ended up handing down a decision on 10 or 15 and it makes it very difficult to actually determine where some of these decisions come from.

PRESIDENT: Wouldn't there be recorded minutes of those hearings?

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MR SKINNER: There should be, sir.

PRESIDENT: Yes.

MR SKINNER: We do indeed have a reasonably comprehensive record system at the mine, but unfortunately there are significant gaps and also the localities of some of the hearings, obviously didn't lend itself to minute taking.

PRESIDENT: Yes. Well, we've changed all that, haven't we?

MR SKINNER: So, in summary, I hope I've thrown some light on the intention. I believe the award literally read will substantiate our proposition that we have been adhering to the award correctly and indeed, there is a provision in the existing award to remunerate clerical employees who indeed do pursue some course of advanced study.

PRESIDENT: Yes. Mr Skinner if, in determining this matter, I came to the conclusion that this question of 'equivalent' needed to (be further defined or clarified, (and of course section 43 of the Act empowers me to do that, if I believe that the award is somehow ambiguous or unclear) then in publishing my declaration, I can also vary the award.

I am usually loathe to do this because I believe if there is some ambiguity discovered and it needs to be repaired, or put right, then the parties affected by the award ought to be given an opportunity to address that on the merits. And so I usually refrain from doing it. It seems to me, clear, that whilst you've been most helpful in providing this background or background of understanding as evidenced by Exhibit A., there is still nothing in Exhibit A. that says that the criterion was that in order to attract a tradesman or equivalent rate, you needed a ticket.

PRESIDENT:

I think you're probably right - having regard for the classifications included in the first 3 items - they would all have to have some ticketing ^{of} certification such as it is, ~~But~~ of course that's only your understanding of it. I can't read that into the present award.

It's very difficult therefore for me to say, 'Well, yes, I agree with you, Mr Skinner, tradesman and equivalent means an engine driver, for example, who has a ticket'. It might also mean a coxswain, if you had such a person, who had a coxswain's ticket - something you can obtain very easily. Would that make the person equivalent of a tradesman? But it would exclude a clerk who had a clerical certificate.

I'm sure you'd agree with me, that whilst that particular adjective remains there, it may be the cause of some confusion.

MR SKINNER:

There's no doubt, sir.

PRESIDENT:

Yes. But whether it ought to be addressed in different proceedings or even privately, by the parties, and cleaned up once and for all is something that I couldn't myself answer, although I have an opinion on it.

If I were to say what I thought 'equivalent' meant, I would probably call upon a crown law opinion that I have in my possession regarding a question of what was meant by the term 'or qualifications deemed by the employer to be equivalent thereto' and that opinion - I'm paraphrasing - was ... that before something can be equivalent thereto, it must be demonstrated beyond reasonable doubt that the qualification - if for example it was a professional engineer or the equivalent thereto - it would need to be demonstrated that the person held a professional qualification, that it was obtained at a recognized college or

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PRESIDENT:

university, that it was the result of an examinable course of study and that the person holding that equivalent qualification was able to act or hold himself out as a professional.

If we were to apply the same reasoning to a tradesman or equivalent, we would probably be saying, well, it must be someone who has served a 4-year apprenticeship or equivalent - say, a radiographer or someone like that; perhaps a draughtsman - that that person is able to hold himself out as a skilled person and exercise a trade skill and generally do all the things, or broadly, similar things to a tradesman.

You might find that a clerk with a clerical certificate obtained from T.A.F.E. would fall into that category. You might find that he did not. But as it stands at the moment, I'm as unsure as I'm sure Mr Fry is and possibly you, just what 'equivalent' meant.

I think you're probably right. That's what the parties intended in the first place - that tradesmen and particularly mine winders and maybe some of the more skilled stationary engine drivers - I would wonder, would it include bulldozer drivers?

MR SKINNER:

No, sir.

PRESIDENT:

But they would have a ticket.

MR SKINNER:

As a plant operator.

PRESIDENT:

Yes. They also have a D.L.I. ticket. Would it include truck drivers who have heavy rigid vehicle endorsements?

MR SKINNER:

No, sir.

PRESIDENT:

So, we're in trouble already, aren't we?

MR SKINNER:

Because of the word 'equivalent'.

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PRESIDENT - SKINNER

PRESIDENT: Yes. Even applying the ticketing criterion. Do you see what I mean?

MR SKINNER: Certainly, sir.

PRESIDENT: No doubt the company know what they mean.

MR SKINNER: Oh well - in 1973 I was still at university, so I can honestly say I'm not.

PRESIDENT: Well you could relate to my earlier exposition on the professional qualifications or equivalent thereto, then?

MR SKINNER: Yes. I've had difficulty in establishing the intent and without the reasons for the decision and as I've already pointed out, there were none in relation to this specific section - simply an order. So, I have simply had to base my submission on a balance of probabilities and I agree that in a matter for interpretation, that is somewhat inconsistent.

MR SKINNER: Obviously I would like to be able to stand up here and say, well, this is undeniably the situation.

PRESIDENT: If you had a transcript it might help of course. I don't think we can refer to transcript in matters of interpretation, because we don't really know if the decision is based on what might be simply no more, no less an obiter statement^s.

MR SKINNER: No. So, that's primarily why I have based this submission on what I believe to be the genuine intent. If there is any - obviously we've established that, there is a degree of ambiguity - that ambiguity was not recognized or indeed considered to be a problem in 1973. Obviously the parties concerned then, believed that the adjective, "equivalent" was relevant to their situation.

I agree as time elapses, situations change but in this matter, which is simply one of interpretation, I would suggest that the custom and practice of the last 13, 14 years, if nothing else, is a fair indication of what was intended and what should remain.

PRESIDENT: Thank you, Mr Skinner.

MR SKINNER: Thank you.

PRESIDENT: Mr Fry?

MR FRY: Just briefly, sir - custom and practice is a factor we all recognize, but custom and practice can also be the result of it never being challenged and certainly the very fact that the Clerks' Union as an entity was not present at Rosebery when this order was brought into being on 25 July 1973.

But again I say to you, most of the clerks were not, by the company's definition, covered by the terms of the award. They worked it out amongst themselves primarily and there was certainly no input from the Clerks' Union to sustain whether 5.

MR FRY:

`A4 classifications' got \$3, was the right rate for a clerk at that time.

And it's interesting too, sir, to note that on a ratio basis of \$3 to \$6.90, as it was then, was somewhere in the order of 40%, where today \$38.90 to \$43.00 is somewhere around about 90%.

I know that the Rosebery composite allowance is not the same as that Rosebery adjustment allowance - some other factors came into being and other allowances were amalgamated to make it but the original fixing point of \$3 to \$6.90 - there was a gap - the rate for a clerk, according to the company was about 40% of the worth of a tradesman, where today we are talking about a gap of \$4.10. So there is a 90% factor closer to, so that the whole proportions have been varied over a period of time - for good and valid reasons, I again say to you, sir. But again, none of those arguments have been at the times when the Clerks' Union was present to argue them.

PRESIDENT:

But of course it doesn't, I take it, Mr Fry, refer or it's not intended to somehow compensate or recognize skill, except in this rather obscure way, referred to by Mr Skinner, in that section 35 of the Consolidated Award seems to make it fairly clear that the amounts prescribed:

"... incorporate and supersede all previous allowances including disability and site allowances."

MR FRY:

Yes.

PRESIDENT:

Now, I don't know what all the other allowances are, but certainly it includes a component for disability and site allowance.

MR FRY:

Yes.

PRESIDENT:

Do we take it, from that, that

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PRESIDENT - FRY

PRESIDENT: over time the clerks have either suffered greater disabilities than they were suffering in 1973, or the tradesmen and others have suffered a lessening in their disabilities and thus the gap is narrowed.

MR FRY: I don't think that question's ever been addressed, quite frankly, sir, and that's one of the problems that I alluded to at the start of my submission - the very fact that there is no record. We are simply in the hands of people of, I suppose goodwill, to try in the first place to determine it and then bring it to you when we couldn't fix the problem between ourselves.

PRESIDENT: It's unfortunate that you bring it here by way of interpretation, Mr Fry. That's not an admonishment, it's simply to indicate that as it is an interpretation, we can't debate the thing on the merits.

MR FRY: Yes. I understand that, sir. In retrospect, it may have been better to pursue it another way, but when we first addressed the problem, to us it was like colloquially, sir, 'What the hell's the matter with you. It's black and white to us. Why don't you cop what we're saying'. And that's really what it was. Our members have felt that that was the case the whole way through and that the application was made to say, 'Well, if you're not capable of reading black and white definitions, we are and I'm sure the President will be'. That's the reason it was brought to you in this form, sir.

The other question - just a brief note, sir - Mr Skinner referred to a definition in his Collins Dictionary, 'equal in value' as contained in the dictionary is simply reflected, what we would say, is an equivalent rate of pay.

Now, Mr Skinner may contend that equivalents were as defined in that

MR FRY: order, but certainly it's still very much open to interpretation.

PRESIDENT: I think he said 'equal or interchangeable', didn't he?

MR FRY: Yes. He did too. Interchangeable ...

PRESIDENT: Well, you can't interchange a clerk for a tradesman and vice versa.

MR FRY: No. But I happen to believe there is a skill factor involved in this. I think that's primarily where it went to - that there are recognized skills that a tradesman has and he was compensated for it at that level. We are saying that a clerk also has skills that he learns on and off the job, which at a certain level, because the award already recognizes the rate of pay for a clerk doing certain functions, equates to that of a tradesman. Therefore where an allowance applies it should equally apply to clerks as it does to a tradesman.

PRESIDENT: Yes. Are we getting into the hallowed area of merit?

MR FRY: Yes, we are.

PRESIDENT: That's the problem, isn't it, Mr Fry?

MR FRY: You are quite right. Other than that, sir, we leave it, except to say that, we have over a period of time, attempted to do what you were suggesting we try to do, that was to resolve it amongst ourselves. Unfortunately, there doesn't seem to be a great - over 2 years of talking about it - we haven't been able to do something.

PRESIDENT: Were you given logical reasons why the company couldn't come to the party on this, Mr Fry? I mean, did they say the same sort of thing that has fallen from Mr Skinner?

MR FRY: No. I have never seen this document before, sir. The primary reason it was given to us was, they were scared of a flow-on to tradesmen who would

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MR FRY: seek because clerks had now caught up to them by their definition- that tradesmen would want to jump in and kick their chook house down to get ...

PRESIDENT: The shunter's law, in other words?

MR FRY: Yes.

PRESIDENT: Yes. I see.

MR FRY: And we said that we had spoken to the other trade unions and this is an unofficial comment, but I certainly did speak to representatives and their State officials who have said, they thought we were receiving it as well and there would be no flow-on but I can't categorically state as being the position of the E.T.U. or the A.M.W.U., or so on. I'm simply saying to you, in discussions with officials off the record, they gave us to believe that they thought we were receiving the higher rate.

So, it really is back in your court, sir.

PRESIDENT: Thank you for nothing, Mr Fry.

Then I will reserve my decision on this.

HEARING CONCLUDED