

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 3461 of 1991
and T No. 3929 of 1992

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

re minimum rates adjustment,
restructuring of award

COMMISSIONER IMLACH

HOBART, 16 December 1992
continued from 3/11/92

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: Any change in appearances? No? Well who's first?

MR BAKER: I think the honour befalls myself, Mr Commissioner.

On the last occasion that we were before you I tendered a document, which I think was draft 2, in relation to a re-writing of the Automotive Industries Award which encompassed both the structure of the salary scales and also the general conditions of service.

I have handed to your associate, just prior to this hearing commencing, a document headed Draft 4 dated the 2nd of December 1992 Automotive Industries Award Conditions of Service. This is the latest document that we have discussed. I might indicate to the commission that since our last hearing before you there has been now two meetings with the unions respondent to the award to discuss the conditions of service award - sorry, to discuss the conditions of service as contained within the award and that is reflected in this document. There is still a fair way to go and we certainly don't put forward today that the document is by any means complete, accurate, et cetera. It is a reflection of our workings through the various sectors of the award to finally finish up with a document which is a consolidation of all those various parts and bits and pieces that are currently represented in the award.

The document was forwarded to Mr Edwards, in fact draft 3 would have been forwarded to Mr Edwards ten to 12 days ago now, and that was left for him to comment upon. The other issue and, of course, given time constraints I'm sure Mr Edwards will report to you that he really is not in a position to respond in so far as the conditions side of the award is concerned this morning.

In so far as the wage rates are concerned within the document and also the proposal to introduce a minimum rates adjustment proposal into the award, discussions have been ongoing between the unions and also between Mr Edwards, representing the TCI and myself, concerning the introduction of a minimum rates adjustment in so far as this award is concerned.

It is our proposal to put to you today that the situation in so far as that concept is concerned must be addressed. The issue now has dragged on now for some eight months, I think it is - I think the award was last varied in April of this year when the 2.5 National Wage Case variation was applied to the award, and there were undertakings given in the commission in so far as the restructuring of the award together with the restructuring of the salaries - the salary spine and associated bits and pieces with it.

We have endeavoured over that period of time to come to some sort of a conclusion with the TCI. Mr Edwards has informed me on several occasions that he believes my translations in so far as translating the individual classifications into wage group levels some of which he tells me are high. Unfortunately, I've been unable to obtain from him exactly where they are high or the ones that are wrong. The situation is compounded by the fact that the federal award, which applies in this area, has recently, as late as a few days ago, been varied to reflect the final instalment of the minimum rates adjustment in that award and we now have a federal award rate for trades people, operating in the state, of \$417.20 as opposed to the state award which is 393.40, I think it is. That is, you know, basically we're looking at a \$26 a week differential and that sort of situation I don't believe can be allowed to continue any longer.

The situation was tolerable when the federal award rate was \$404, in round terms, as compared to the 393.00 in the state. But as I've just indicated, the federal award has now moved to 417.00 and the differential for tradesmen of course is similarly affected as far as non-trades are concerned is that that differential is simply grown out now of all proportion.

It would be our proposal to put to you today that the award be varied to reflect a minimum rates adjustment which would bring the trades rate up to \$404.20 which was the amount equivalent to the third minimum rates adjustment in the federal award and that non-trade rates be amended accordingly, and given that there is some discrepancy between Mr Edwards of the TCI and ourselves, in so far as the draft order - a possible draft order is concerned, it would be our submission to put to you today that the award be varied in the manner that I'm seeking and that the parties be directed to prepare a draft order acceptable to the commission in the immediate future, and by the immediate future I mean immediately.

That really encompasses the submission that I've put to you this morning. To recapitulate, the conditions of service award - the conditions of service as far as the award is concerned has now been redrafted on four occasions - sorry, it has been drafted on three occasions. Even though you do have the fourth draft in front of you, as far as the conditions of service are applied - concerned, it's been redrafted three times. We have endeavoured to apply the concept of consolidating the award into one section rather than the numerous sections which currently apply in the award. That documentation, as I indicated, has been forwarded to Mr Edwards a couple of weeks ago for comments. In so far as the salaries structure is concerned we have put forward a single salary spine, which is contained on page 3 of the document that you have in front of you and that goes through to 11 levels, from memory, and it encompasses for the existing levels there in the award. That is followed up with a

classification index, and as I've indicated to the commission it is certainly our intention, and as far as I am aware, it is also the intention of the TCI that we proceed to adopt a structure in a similar fashion. Whether it is the same or not will remain to be seen.

But as I have indicated, that documentation, or similar documentation, has been before the TCI for some considerable time now and as I have indicated I don't believe that the parties can accept a position any longer where we have a federal award rate operating in the state for trades people of \$417.20 and a rate under the state award of 393.40. And I would recommend to the commission that it adopt an attitude of directing the parties to prepare a draft order acceptable to the commission to reflect the introduction of the minimum rates adjustment to lift the trades rate to \$404.20 effective in the immediate future. And subject to any questions from yourself, sir, that would conclude my submission.

COMMISSIONER IMLACH: Yes. Mr Baker, we'll have to hear what the other parties say but I don't know whether I said it last time - I probably did - my understanding of all these restructurings and so on is that they ought to be by agreement. I just make that comment. Of course, if there is no agreement eventually I suppose the commission will have to intervene and that's what you're putting to me, is it?

MR BAKER: Well it is my belief that the matter can be negotiated out between the parties. I have no - in so far as the conditions are concerned, I have no doubt that that will occur. In so far as the wage rates are concerned, I believe that can occur as well but the problem is, in so far as the wage rates themselves are concerned, the point that I'm, you know, now putting to the commission is that we have a situation whereby I believe time has caught up with us in that we're now faced with the position, as I said, of a sweaty \$6 a week differential between the federal and state award, and I just think that's unacceptable for two people doing the same work in the same industry.

I mean, we've accepted a situation not only in this award but in other awards where supplementary payments have been introduced into the federal awards and this commission has followed the line adopted in the federal awards and introduced the minimum rates adjustments and most of those have sort of ran somewhere between six and nine months behind, and I think that situation is acceptable but we're in a position here now where we're actually, if you like, two minimum rates adjustments behind the federal counterpart of this award.

COMMISSIONER IMLACH: All right. Thanks Mr Baker. Mrs Dowd.

MRS DOWD: Mr Commissioner, the Federated Clerks Union supports the application by Mr Baker. If the commission pleases.

COMMISSIONER IMLACH: Mr Noonan.

MR NOONAN: Thanks Mr Commissioner. Yes, I would support the application by Mr Baker.

COMMISSIONER IMLACH: Thank you. Mr Long.

MR LONG: If the commission pleases, our association also supports the submission by Mr Baker.

COMMISSIONER IMLACH: Thanks Mr Long. Mr Edwards

MR EDWARDS: Mr Commissioner, the organisations I represent do not support the submissions of Mr Baker.

Commissioner, unfortunately I am not in a position to be able to indicate to the commission that there is any agreement at all between the parties today. I can indicate that the structure that's been advanced by Mr Baker has not been agreed between the unions and the TCI, in fact in very large measure it hasn't even really been discussed.

One of the problems that I have faced in dealing with this particular issue, commissioner, is that every time I speak with Mr Baker - and this is not intended to be a criticism, rather just a statement of fact - he advises me that there's a new document on the way. I think that's clearly evidenced by the fact we're up to, this morning, draft 4 which came into my possession this morning. The previous document was draft 3, which came into my possession on the 4th of December of this year, by way of correspondence sent by Mr Baker on the 1st of December. The document prior to that was handed to myself on the 30th of November, and I note just by way of passing comment, commissioner, that draft 4 is dated the 2nd of December, which is dated even before I received its previous version.

Commissioner, I'm sure you'll understand that if someone gives you a document which is 54 pages long it takes a reasonable amount of time to go through that documentation to try and find out what's within it. To do it four times takes at least four times as long, if not even longer. And frankly put, I haven't had sufficient time to go right through this document; I have circulated it to my members and asked them to make their observations. They would have received that late last week and the time frame between the handing up of different drafts of this documentation has really prevented any serious consideration of its content.

I don't, for my part, intend to agree to anything without consulting with my members. I might look a little green, commissioner, but I'm not suicidal and therefore I have an obligation to go out and speak to the industry about the issues contained in this documentation.

Frankly, in considering the documentation, and I put these forward only as observations by myself as not necessarily reflecting the views of my members, I have had enormous trouble tying up the classifications listed in the document with those contained in the award. I can't find fifty per cent of the classifications that are currently in the Automotive Industries Award in this document. Additionally, I can find a significant number of classifications in this document that are not currently contained in the Automotive Industries Award.

It would appear to me that Mr Baker has taken the classification names from the Vehicle Industry Repair Services and Retail Award, transferred them to this award without any account of what currently exists in this award, and that has made consideration of the document extremely difficult. And if the commission were interested in examples I could go through an enormous number of them; I don't think it would serve any purpose but I can indicate that that is the position.

And I would ask the question: why are these new classifications being imported into the award as part of what purports to be a minimum rates adjustment exercise? I can't answer the question - perhaps Mr Baker may be able to. What need is there for these new classifications in this award? and I'm not talking about the broadbanded classifications, I'm talking about the schedule of classifications which translates classifications across to the new broadbanded classification schedule that don't even exist. That makes it extremely difficult, commissioner, to try and tie together the documentation that's being presented on a almost fortnightly basis by the MEWU.

I would also ask the question of where the existing clerical classifications translate into the new structure. I notice they are not in the classification schedule, or classification index as it's called. So where do they fit in this new scheme of things? I'm certainly unaware and I will not be lending my consent to anything unless I can identify where various classifications that currently exist in the award translate into this new classification structure. And I would also want to be satisfied of the need for new classifications being brought into the award that don't currently exist. Perhaps Mr Baker may be able to help us this morning and therefore we may be able to expedite this somewhat.

There are also, Mr Baker tells us, or has told me, that the translations in this document are intended to be in accordance with the Vehicle Industry Repair Services and Retail Award. Well I asked Mr Baker where he got the classification 4(b) for an automotive parts sales person other. From my knowledge of the Vehicle Industry Repair Services and Retail Award that translates at 3(a).

Now Mr Baker tells us this is in accordance with a particular award but the facts don't bear that out. Is it little wonder that there is no agreement. Where do junior employees fit in this whole new award?

I note from draft 3, and I obviously haven't this morning had a chance to go through draft 4, but I note draft 3 doesn't contain any junior prescriptions - not for clerks, not for sales assistants, not for drivers, not for non-trades people; there are no apprentices rates in the award, which are all currently existing in the Automotive Industries Award. Where have they gone, commissioner? Mr Baker has never offered me any explanation as to why we're doing away with junior rates in this award. Is this part of some great, grand plan to do away with junior rates? If it is I'd like to at least know that's what we were looking at, but at the moment I'm not aware of it. There is no junior or apprentices rates, to my knowledge, in this document.

I can't agree, commissioner, that anything go in the award as a result of this documentation. I congratulate Mr Baker on making the effort to provide comprehensive documentation, and it's all very well for Mr Baker to advise the commission that there have been two or three meetings with the unions party to the award, prior to today; there have been none with myself and I don't completely blame Mr Baker for that, he has rung me and asked to try and organise meeting dates and we have had trouble doing that. But nevertheless, to come before the commission and say 'We have consensus as the unions party to the award and we therefore want, not one MRA but three, all at once', and the justification is that the unions agree with each other, well, that's wonderful. Maybe the unions might be prepared to pay the wage increases.

It's okay for the unions to stand before you, sir, and say 'We are now four MRAs behind the Vehicle Industry Repairs and Services Retail Award'. The parties to that award began their deliberations some two and a half years ago on the subject. Mr Baker's application for these proceedings is dated the 17th of August this year - the 17th of August. So the matter has been in train for some four months, which is a completely different scenario.

I might also indicate, commissioner, that the Federal Vehicle Industry Services and Retail Award does not contain any classifications above one hundred per cent level. And yet, as

Mr Baker has already pointed out to you this morning, draft 4 goes up to wage group level 11 which is 120 per cent. What fits at those levels? What is the justification for those levels? Who is going to go into them? There is nothing in the classification index that indicates that they're in any way required. I notice some of them apply to clerical employees but what existing level of clerical employee translates to those classifications?

I know I am raising a lot of questions, commissioner, and not providing many answers and it's probably because I don't have any, but there is just no way on this earth that I could agree to this document that Mr Baker tells us is based on the Vehicle Industry Repair Services and Retail Award, which is currently the subject of an arbitration which has been going for in excess of 12 months on the question of classification above the base trades person level. That matter is continuing before Commissioner Frawley, and yet Mr Baker tells us this is based on that and we have wage group level 7 at 105 per cent, level 8 at 107 per cent, level 9 at 110 per cent, level 10 at 115 per cent, and level 11 at 120 per cent with no explanation as to what goes into those. There is no classification definitions provided in the documentation. Is it someone that's got some additional skills over and above the base tradesperson level, or is there some grand plan afoot to put base tradesmen at those levels?

At this stage the union movement, if this went into the award, could go out into the field and demand that an employer classifies someone at level 11 with no explanation at all because there is nothing that tells you whether they do or don't fit there.

Frankly, commissioner, there has been insufficient work done on this documentation to justify the award of anything. The Wage Fixation Principles make it reasonably clear, as I understand it, sir, and have done since 1989, that the minimum rate adjustment is to take place in four instalments spaced six months apart. There was more recently a slight watering down of that provision that provides that in exceptional circumstances there may be some other system agreed or arbitrated. In my submission there is nothing exceptional about these circumstances. The commission is well aware that the main reason this award is so far behind the pack is the inability of the union to agree during the second structural efficiency exercise, which subsequently became a matter for arbitration by yourself, and quite an incredible arbitration it was.

We insist, Mr Commissioner, that if any minimum rate adjustment process is to be commenced in this award it is done in the normal format and that is that there will be four instalments spaced six months apart, second and subsequent instalments will not be automatic but be subject to individual

application on each occasion. That's the norm and there can be no contest with that observation. The only variant from that theme that I am aware of has been by the consent of the parties wherein there has been the possibility of accelerating the MRA process or having a greater or lesser number of minimum rate adjustments than four and both have been used.

Mr Commissioner, I repeat that I am not in a position to agree to the request made by Mr Baker. I have no objection to part of Mr Baker's suggestion being picked up and that is that the parties be directed to confer, and meaningfully confer and not just try and swamp each other with paper. But I think we should sit down and properly discuss what classifications are in this award, what are needed, whether new classifications are needed, whether we should do away with some of the existing classifications, which is what these drafts do with no explanation.

We should also discuss what role there is for junior rates in this award in respect of a wide ranging number of classifications and if there are going to be junior rates what they should be tied to. I note with interest that the Vehicle Industry Repairs Services and Retail Award continues to prescribe junior rates and, indeed, an incremental scale for apprentices which has been omitted from this documentation, and on the basis of that, commissioner, I really have no objection - no alternative but to signify that I do not agree with the proposal put forward by Mr Baker.

I note Mr Baker makes some significant play that the Vehicle Industry Repair Services and Retail Award, according to his submission, was varied a couple of days ago. I am not personally aware that that is the case but I have no reason to disbelieve Mr Baker and, as a consequence, the tradesmen under the state award have slipped some \$26 behind the tradesmen under the federal award. I noted no such concerns being expressed when for the last 30 years the tradesmans rate in this award has been advance of that in the federal award, and really nothing changes except the timing of these things.

There is no difference between myself and the unions that a base tradesman under this award, whatever that may be defined as will be going to the base tradesmans relativity setting, which is one hundred per cent, which is \$417.20. There can be no contest on that, nor do I seek to contest it. What I seek to do is to get there in the normal, methodical way after proper, meaningful negotiations between not only the unions party to the award but with the employers. And I hastily add that the TCI is not the only employer party to this award. I think, from memory, the Tasmanian Automobile Chamber of Commerce were joined to the award as a party earlier this year, and I ask Mr Baker what discussions has been had with that organisation. Have they received this documentation? Do they consent to it?

Mr Commissioner, I oppose the application that's been made by Mr Baker for all of the grounds I've already advanced and would request that the commission does direct the parties to confer and in a meaningful manner but that there be no variation to the award as a result of these proceedings. If it please the commission.

COMMISSIONER IMLACH: Yes, thanks Mr Edwards.

OFF THE RECORD

SHORT ADJOURNMENT

COMMISSIONER IMLACH: Well who's got something to report?

MR BAKER: Thank you for the opportunity for the adjournment Mr Commissioner. The parties have had an informal and a worthwhile discussion. We have agreed to further programme the matter and it has been agreed between the parties that we will meet on Wednesday the 21st of January -

MRS DOWD: Twentieth.

MR BAKER: Twentieth, I'm sorry - the 20th of January for the entire day where it is anticipated that we should make good progress towards resolving the differences between us, and following that meeting it would be our intention to contact the commission and advise of progress, or otherwise. But as I indicated in my opening comments to the commission that I believe that we can resolve the outstanding issues between us.

COMMISSIONER IMLACH: Good, that's the sort of thing I wanted to hear. Do you agree with all that Mrs Dowd?

MRS DOWD: Yes, we do Mr Commissioner.

COMMISSIONER IMLACH: Mr Noonan.

MR NOONAN: Yes, Mr Commissioner.

COMMISSIONER IMLACH: Mr Long.

MR LONG: No problems.

COMMISSIONER IMLACH: Mr Edwards, what is your attitude on all this?

MR EDWARDS: We have a position of agreement, Mr Commissioner, that we will meet on the 20th of January 1993 to see if we can have an agreement. If it please the commission.

COMMISSIONER IMLACH: Good. Well I recommend that the parties make every attempt to reach agreement and I will endeavour to make myself available as soon as possible after that if you think we can get the matter formalised from then on. At the moment I'll be available at any time; let's hope it's the same then. If we don't hurry up we might find that it's all enterprise agreement and there is nothing for the award to cover. I don't know whether that's a good thing or a bad thing. Mr Edwards is smiling from ear to ear so I don't know what that means.

All right, well, we'll adjourn till I hear from the parties.

HEARING ADJOURNED