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TRANSCRIPT OF PROCEEDINGS

O/N 0571

TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT P.C. SHELLEY

T No 11000 of 2003

**DRAUGHTING AND TECHNICAL OFFICERS
(PRIVATE INDUSTRY) AWARD**

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Automotive, Food, Metals, Engineering,
Printing and Kindred Industries Union to vary
the above award re title, scope and definitions**

HOBART

11.30 AM, WEDNESDAY, 16 JUNE 2004

Continued from 25.9.03

**This transcript was prepared from tapes recorded
by the Tasmanian Industrial Commission**

PN82

MR P. BAKER: I appear on behalf of the applicant organisation.

PN83

MR R. ROLLINS: I appear on behalf of the Tasmanian Chamber of Commerce and Industry Limited.

PN84

THE DEPUTY PRESIDENT: Thank you. Mr Baker?

PN85

MR BAKER: Thank you, Deputy President. You may recall that on the last occasion when this matter was before the Commission we indicated that we had a consent document which was subject to some further discussions between the parties as to a tidying up of it. Well, I undertook and we had those discussions with the TCCI but unfortunately I am not too sure where it went to from thereon so I asked the matter to be brought back before the Commission today to finalise the process that we undertook in September of last year and I have handed to your associate a further draft which - - -

PN86

THE DEPUTY PRESIDENT: Excuse me, look, sorry I am just a little bit confused. You are talking about the Vegetable Preservers Award are we or are we talking about the Draughting and Technical - - -

PN87

MR BAKER: Oh, I am sorry.

PN88

THE COMMISSION: Draughting and Technical.

PN89

THE DEPUTY PRESIDENT: Yes, that is what you have called on.

PN90

MR BAKER: Draughting and Technical.

PN91

THE DEPUTY PRESIDENT: Yes, and I suspect you are addressing the Vegetable Preservers - - -

PN92

MR BAKER: No, no.

PN93

THE DEPUTY PRESIDENT: No, no, Draughting and Technical? Okay, you are right, fine. It is just that what is sitting here before me - I see, okay, keep going. Yes, my mistake.

PN94

MR BAKER: Right - - -

PN95

THE DEPUTY PRESIDENT: Okay, had discussions, yes?

PN96

MR BAKER: We had all the discussions, yes. We did all that and Mr O'Neil - the TCCI and I had another chat and we exchanged drafts through the email system; we did all that but unfortunately we just didn't seem to be able to bring it to a conclusion so I thought well the best way of bringing this matter to a conclusion is simply have the matter re-listed and see if we can't finalise it and I see no reason why we can't do that literally today.

PN97

So perhaps if we could just go through the draft which I have provided to the Commission and to Mr Rollins about those issues that arose out of the last - when this matter was previously before the Commission and at page 2 of the document there was a note that I had under the award interest and next to the name Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union I have inserted a bracket AMWU which is - - -

PN98

THE DEPUTY PRESIDENT: Easier.

PN99

MR BAKER: Easier for later use in the document. So I have made that change under the first part of the document. Under Part 2 at page 4, the Contract of Employment, there are two issues that I would bring to the attention of the Commission. One of those I brought to the attention of my colleague this morning in relation to A3, Weekly Employment, where it says:

PN100

The employee not attending for duty shall except as provided in clause 30, Sick Leave, hereof lose his or her pay at the actual time of such non-attendance.

PN101

Now, I am not too sure what that clause in fact means. Well, I know what it means but I am not sure how you would apply it. Now, it was only when I was sort of reading through the document this morning that it actually sort of stuck out there that it seems - - -

PN102

THE DEPUTY PRESIDENT: What page is this?

PN103

MR BAKER: I am sorry, I beg your pardon, Deputy President. Page 4 under Contract of Employment.

PN104

THE DEPUTY PRESIDENT: Yes.

PN105

MR BAKER: There are two issues there, one which I have raised with the TCCI and one which I have not, and perhaps if I go through them in sequential

order. Under paragraph 2 of Weekly Employment there is the issue about the stand-down provision.

PN106

THE DEPUTY PRESIDENT: Yes.

PN107

MR BAKER: Which you raised with the parties in the Impact Fertilisers matter where you indicated in fact such a provision is contrary to the provisions of the Act.

PN108

THE DEPUTY PRESIDENT: Well, that has not actually been fully argued before the Commission but it is a view that I would need to be persuaded wasn't the correct one, that it is ultra vires the Act because the Act only refers to stand-down in the case of refusal to perform work.

PN109

MR BAKER: Yes, yes.

PN110

THE DEPUTY PRESIDENT: Yes.

PN111

MR BAKER: So I would have to have perhaps a discussion with Mr Rollins about that second part of the paragraph and clearly in an award of this nature I would have to say to you that its application would be very remote because the structure of it goes back to the old clauses of the 30s and the 40s and of course stoppage of work - - -

PN112

THE DEPUTY PRESIDENT: Well, three strikes are provided for in the Act anyway.

PN113

MR BAKER: Yes.

PN114

THE DEPUTY PRESIDENT: But the other one is not.

PN115

MR BAKER: No.

PN116

THE DEPUTY PRESIDENT: That is stoppage of machinery.

PN117

MR BAKER: That is right, but then stoppage of machinery would in fact not have any impact upon the classification of people that are employed under this award because normally they would have other duties which would keep them occupied but I highlight that and likewise paragraph 3 which then flows on from it which talks about where you don't attend other than in sick leave you lose your pay for the actual time of non-attendance. Now, I don't know whether that actually relates to the preceding paragraph or in fact it stands there

in isolation but in any event I really don't understand its application. Having said that, it has been in the award since its inception so - - -

PN118

THE DEPUTY PRESIDENT: It doesn't mean it has got to stay there.

PN119

MR BAKER: No, it doesn't, so perhaps that is something that we just need to have five minutes about and have a discussion about that. So if I may proceed and I will return to that provision. The next issue is at page 7 of the document, under Definitions, and I can fix this one this morning. It says - and again I was reading through it last night, just one last time I was going through it, but under the second line where it makes a reference to an organisation called TARAC, that organisation now no longer exists and it has been replaced by one which I understand is known as VRAC - the Vocational Accreditation Recognition Committee or something or other. Now - - -

PN120

THE DEPUTY PRESIDENT: Yes, with such a moveable feast maybe it is better described just as the appropriate accrediting authority or whatever?

PN121

MR BAKER: Yes, or by the State recognition authority and it has just got TARAC. Well, perhaps if we were to remove the word TARAC - - -

PN122

THE DEPUTY PRESIDENT: TARAC, yes.

PN123

MR BAKER: - - - altogether and just leave that, just leave that blank?

PN124

THE DEPUTY PRESIDENT: Yes.

PN125

MR BAKER: Yes, I was at a meeting preceding the hearing this morning and a colleague from OPCET was telling me they have had another re-organisation; a minor one, but - - -

PN126

THE DEPUTY PRESIDENT: Yes.

PN127

MR BAKER: They have had yet another one.

PN128

THE DEPUTY PRESIDENT: Well, at least TAFE is still TAFE.

PN129

MR BAKER: Yes, yes, that hasn't changed. Now, the next item that I have is at page 19.

PN130

THE DEPUTY PRESIDENT: Do the National Industry Training Advisory Board still exist?

PN131

MR BAKER: Oh, well - - -

PN132

THE DEPUTY PRESIDENT: I thought that ITAB has got the boot?

PN133

MR BAKER: They have been replaced, Deputy President, with organisations known as National Industry Skills Councils. Now, there is still a couple of advisory bodies that are floating around the place such as, for example, Automotive Training Australia, but that is another very good question. Perhaps if we just took out the word "advisory" and left them as the National Industry Training Body?

PN134

THE DEPUTY PRESIDENT: Yes, as a generic term.

PN135

MR BAKER: Yes, I mean that may well be quite clear in another 12 months' time but by then there might be a change of Government and there might be another change of direction so - who knows? And at page 19, Deputy President, there was an issue concerning wages rates for employees without relevant work experience.

PN136

THE DEPUTY PRESIDENT: Yes.

PN137

MR BAKER: You may recall that we had a discussion whether or not it was what relevant work experience meant and so we have now defined it as wage rates for employees without relevant work experience in the draughting and technical industry as defined by Part 1, clause 3 scope of this award. So it is actually work experience within the industry of draughting and technical work. So we have put that in just to tidy that clause up and the other issue that I had was at page 36 which was Bereavement Leave where we have added the grandfather, grandmother and grandchild and I - subject to comments from the other side of the table - I am not sure whether there is anything else that I have omitted.

PN138

THE DEPUTY PRESIDENT: Okay.

PN139

MR BAKER: I may have done and inadvertently not marked it, but I am aware that they were the changes that I had to make which leaves us back with the issue of the stand-down provision under A2 and that - sorry, Part 2, clause 2, A2 and 3.

PN140

THE DEPUTY PRESIDENT: Yes, but if as you say it is not actually something that even would have any application in this industry perhaps it does no damage to leave it out and then we don't need to get hung up on what happens with that, but we will hear from Mr Rollins.

PN141

MR ROLLINS: Thank you, Deputy President. I have taken over this matter from Mr O'Neil who has previously had carriage of it and has been involved with the discussions with the union and I have recently taken over this matter from Mr O'Neil so I haven't been involved in the discussions of matters of substance but I have done an exercise of going through the award and just picking up a few little typos and maybe a few tidying up things that we could have a look at. Largely we consent to the changes that Mr Baker alluded to this morning. It is the first time, as Mr Baker highlighted, he did raise with me before this hearing the issues with Part A3 of the contract of employment clause and as I have just briefly explained it is the first time I have come across that issue or come across the clause and it has been raised with us.

PN142

I can see what the meaning of the clause is but I think - and particularly with 2 and 3 - from our perspective I think we would like to go away, or I would like to go away, and do a bit more research on the grounds of looking at the usage and history of the clause and just to double check and liaise with our members to see exactly, you know, how the clause is used if it is relevant in terms of the breakdown of machinery and what we are going to do with it and just see if we can unearth some more information on Part 3 of that clause, if it is in relation to Part 2, or if it in fact has another meaning of which we are not aware of this morning. So that is probably some - well, my recommendation is perhaps that certainly from our side of things we might need to go into a little bit of work on that and try and come back to the Commission or come back - the parties get together on that ASAP to have some discussions there and particularly taking note of your comments in regards to the Act and the award and I understand it hasn't been fully argued - - -

PN143

THE DEPUTY PRESIDENT: No.

PN144

MR ROLLINS: But whether or not we need to have a - - -

PN145

THE DEPUTY PRESIDENT: And whether this is the right time or the right award to be arguing that is - yes.

PN146

MR ROLLINS: Exactly, exactly, so maybe if we can just go away and have a look at it we might be able to find a useful solution or easy solution that we can agree to. Going on to just some of the things that I have picked up that maybe we can just correct this morning so we can keep this matter moving, on page 4 in the clause we were just discussing, clause 2, Contract of Employment, A3 refers to clause 30, Sick Leave. I think that - - -

PN147

THE DEPUTY PRESIDENT: Okay, yes, so that has got to change.

PN148

MR ROLLINS: Yes, I think that should simply say Part 6, Leave and Holidays with Pay, clause 6, Sick Leave, just so it refers off to the right clause there.

PN149

THE DEPUTY PRESIDENT: Are you making a note of this, Mr Baker? Did this document - did this originate from the AMWU office, so you have got it in your computer?

PN150

MR BAKER: No, it actually originated from Mr O'Neil.

PN151

THE DEPUTY PRESIDENT: Oh, okay, so TCCI has got it on computer and would be able to make corrections and provide a clean copy with - - -

PN152

MR ROLLINS: Yes.

PN153

MR BAKER: We both can.

PN154

THE DEPUTY PRESIDENT: You both can? Okay.

PN155

MR ROLLINS: Then a bit of a typo on page 6 with national which we can fix very easily.

PN156

THE DEPUTY PRESIDENT: Yes.

PN157

MR ROLLINS: Page 17 of the copy I have got which is just after the Wage Rates, B, Annual Salary. Once again, it refers to the old number and clause-numbering structure there so we just need to bring that up to date and it refers to clause 8, Wages Rates. I think it should refer to clause 3, but I have got those noted here, the changes that we need to make there.

PN158

THE DEPUTY PRESIDENT: Excellent.

PN159

MR ROLLINS: Page 23 on my copy, clause 7, Superannuation. Some of the formatting has disappeared there. Contributions should have an (a) in front of it in brackets, small "a", and then we need "i" and "ii" following on in the next two paragraphs which we can fix up pretty easily. Now, I haven't had a chance to discuss this next one with Mr Baker but I note that the current version of the award has a list of businesses and some exemptions for superannuation funds.

They have been removed, excellent, so I just found that this morning and I just wasn't sure of the background on that one.

PN160

Page 25, Fares, Travelling Expenses and Travelling Time, we have got reference to clause 2, Motor Allowance; clause 3 is the Motor Allowance. I just need to fix that one up, and page 29, Requirement to Work Reasonable Overtime, we have got a bit of a different numbering system in effect there so I have just noted that we need to amend that to be J(i) then J(ii) and then following on from that we have got five dot points which we can simply number 1 through to 5, so we can just fix that up and put a full stop on the end so that is a pretty easy one to fix.

PN161

And the only other thing that I - no, that was all in terms of the formatting exercise and just some tidying up that needed to be done, but apart from those points - and they can all be fixed up on someone's computer, either mine or Mr Baker's - we are agreed on most of the other matters except for I would like to look into the issue of the Contract of Employment clause a bit further.

PN162

THE DEPUTY PRESIDENT: Yes, so you have no problems with - in terms of the training regime, deleting the word "TARAC" and deleting the word "advisory"?

PN163

MR ROLLINS: No, no issues there. As I say, we can try and keep the - it as broad as possible so we don't have to be in here every 12 months - - -

PN164

THE DEPUTY PRESIDENT: Yes, that is right.

PN165

MR ROLLINS: - - - altering the wording in awards and the changes, the insertion of the additional family members in Bereavement Leave as I understand is not in issue.

PN166

THE DEPUTY PRESIDENT: Yes, that is fine, and you reached the definition together through discussion for that relevant work experience?

PN167

MR ROLLINS: Yes, that is right, of the work experience. Thank you, Deputy President.

PN168

THE DEPUTY PRESIDENT: Okay. So where we go from here is that you are going to have discussions on those other points so shall we set down another hearing date or will you simply be able to present an agreed - no, we will probably need another hearing date as soon as possible.

PN169

MR ROLLINS: I think another hearing date to keep moving the matter would be best.

PN170

THE DEPUTY PRESIDENT: How much time do you think you are going to need to do that bit of research? I mean, it is probably - I am fairly positive that you will be able to come to some sort of an agreement because of the nature of this particular award rather than have a fight to the death on that particular theme.

PN171

MR ROLLINS: I think we would probably only need a couple of weeks to just quickly go away and do the work and liaise with the members, so we wouldn't need a lot of time, I think, in the interests of keeping this moving.

PN172

THE DEPUTY PRESIDENT: No, how about 4 pm on Wednesday the 23rd?

PN173

MR BAKER: That is next - week after next, isn't it? That is next week.

PN174

THE DEPUTY PRESIDENT: It is next week, otherwise it is not going to be until August.

PN175

MR ROLLINS: That should be - - -

PN176

THE DEPUTY PRESIDENT: No - yes, it is next week.

PN177

MR BAKER: That is fine.

PN178

MR ROLLINS: Yes, that should be fine.

PN179

MR BAKER: And I will undertake to tidy up those other little bits and pieces and send them through to the TCCI today.

PN180

THE DEPUTY PRESIDENT: Excellent, well done. Okay, well we will adjourn this matter until 4 pm on Wednesday, 23 June 2004.

ADJOURNED UNTIL WEDNESDAY, 23 JUNE 2004

[9.55am]