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## **TRANSCRIPT OF PROCEEDINGS**

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O/N 9337

### **TASMANIAN INDUSTRIAL COMMISSION**

#### **DEPUTY PRESIDENT WATLING**

**T No 10327 of 2002**

#### **PASMINCO ROSEBERY (MINING) AWARD**

**Application under section 23(2)(b) of the Industrial Relations Act to vary the above award to increase rates of pay and to increase work-related allowances**

**HOBART**

**10.30 AM, MONDAY, 7 APRIL 2003**

**Continued from 2.8.02**

PN117

THE DEPUTY PRESIDENT: Any alteration to appearances?

PN118

MR W.J. FITZGERALD: No.

PN119

MR R. FLANAGAN: No.

PN120

THE DEPUTY PRESIDENT: Mr Flanagan?

PN121

MR FLANAGAN: Thank you, Deputy President. Deputy President, since the matter was last before you the union considered the matters that you raised during proceedings on 2 August and forwarded to Mr FitzGerald on 12 March our views in respect of those issues and also forwarded a copy of that to yourself on 12 March. In that correspondence the union indicated that we were of the view that there would be no impact on any other award of this Commission if the Commission granted the application.

PN122

The second issue was whether or not there would be any impact on the company and in our view, given that the employment is regulated by section 55 agreement, there is no cost impact on the company, and thirdly, the Commission asked us to consider whether increases should be phased and we expressed the view that given that there was no cost impact on the company and no consequence for any other award of this Commission then there was no reasonable basis for the view that the adjustment should be phased in.

PN123

In that correspondence to Mr FitzGerald on 12 March we asked if they could advise us on behalf of the company what their views were in respect of those matters. On 26 March, we again wrote to Mr FitzGerald seeking a response in relation to those issues and we still have not received a response formally in terms of those issues. We did, however, receive a phone call from Mr FitzGerald on Friday last week at around 1 o'clock and in the correspondence of 12 March we had provided an amended table of calculations and an amended schedule and the query which we had received - or did receive from Mr FitzGerald on Friday was whether or not by applying the \$34 as we are seeking in this application we had had regard for the impact of that \$34 on subsequent State wage cases.

PN124

So we have examined that issue - - -

PN125

THE DEPUTY PRESIDENT: The compounding effect?

PN126

MR FLANAGAN: The compounding effect, yes, Deputy President.

PN127

THE DEPUTY PRESIDENT: Yes.

PN128

MR FLANAGAN: We have examined that issue and it appears that it does in fact alter the mill operator and surface operator rates which are contained within that correspondence. So I would seek leave to tender an amended schedule to replace the schedule in the application and it also supersedes the schedule attached to the correspondence.

PN129

THE DEPUTY PRESIDENT: Right, so we will mark this exhibit A1.

### **EXHIBIT #A1 AMENDED SCHEDULE**

PN130

MR FLANAGAN: I would also seek to provide the Commission - - -

PN131

THE DEPUTY PRESIDENT: So just for the sake of the record - - -

PN132

MR FLANAGAN: Yes.

PN133

THE DEPUTY PRESIDENT: - - - what you have done is you have taken the State wage case decisions, you have added it and then used the new figure and then added it to the next State wage case and then taken that figure and added it to the next - - -

PN134

MR FLANAGAN: That is correct, Deputy President.

PN135

THE DEPUTY PRESIDENT: - - - so it has sort of given - - -

PN136

MR FLANAGAN: It has the proper impact that would have occurred had the award been varied from time to time to reflect the State wage cases.

PN137

THE DEPUTY PRESIDENT: Yes.

PN138

MR FLANAGAN: Now, I intend to take the Commission through that this morning.

PN139

THE DEPUTY PRESIDENT: Right.

PN140

MR FLANAGAN: The critical things I suppose in A1 are - - -

PN141

THE DEPUTY PRESIDENT: So are you going to table a new - going to put as an exhibit the new table that you - - -

PN142

MR FLANAGAN: The table which is attached to the correspondence - - -

PN143

THE DEPUTY PRESIDENT: To Mr FitzGerald.

PN144

MR FLANAGAN: - - - of 12 March - - -

PN145

THE DEPUTY PRESIDENT: Yes.

PN146

MR FLANAGAN: - - - in terms of work-related allowances is still unaltered. The table in terms of State wage case increases only deals with the '93, '94, '96 and '97 State wage case increases. That doesn't alter but I intend to provide you with a subsequent table which shows the compounding impact - - -

PN147

THE DEPUTY PRESIDENT: Okay, thank you.

PN148

MR FLANAGAN: - - - on subsequent State wage cases.

PN149

THE DEPUTY PRESIDENT: Is this matter going to be consent?

PN150

MR FLANAGAN: That is a good question. I will just ask it?

PN151

THE DEPUTY PRESIDENT: Mr FitzGerald?

PN152

MR FITZGERALD: Yes, yes, it will be, Deputy President.

PN153

THE DEPUTY PRESIDENT: It will be consent?

PN154

MR FITZGERALD: I will put some comments on the record later regarding it.

PN155

THE DEPUTY PRESIDENT: Okay.

PN156

MR FLANAGAN: Okay. So just very briefly then, in variation number 1 the rates of pay are adjusted to reflect the outstanding State wage case adjustments.

PN157

THE DEPUTY PRESIDENT: And those adjustments are as per your table?

PN158

MR FLANAGAN: As per a table I am about to provide you with, yes.

PN159

THE DEPUTY PRESIDENT: Yes, okay.

PN160

MR FLANAGAN: The table attached to the correspondence of 12 March for work-related allowances and the amended table I am going to provide you with, and they - in the second variation which deals with clause 9 the work-related allowances are increased in accordance with the table. So if I can provide you with - I am afraid, Deputy President, given the short time we were unable to have this typed up but it is a table which we will take you through to justify the rates which are contained in A1.

PN161

MR FITZGERALD: This is the one?

PN162

MR FLANAGAN: Yes.

PN163

THE DEPUTY PRESIDENT: We will mark this exhibit A2.

## **EXHIBIT #A2 TABLE**

PN164

MR FLANAGAN: Now, if I can take you to the first page of A2, in 1998 the State wage case provided for an increase in rates of pay for \$14 per rate up to and including \$550; for \$12 above \$550 up to and including \$700; and for \$10 above \$700 per week. That was the effect of the 1998 State wage case. If I can then take you to the second page, if you can disregard the comments there under the heading 1998, we then go on to detail the effect of the State wage cases in 1999, 2000, 2001, 2002 and provide the relevant T numbers. If I can then take you to the page following that, what we have done is we have identified the rate of pay which was operative after the 2 1/2 per cent 1991 State wage case.

PN165

So at that point in time the rate of pay for both the mill operator and surface operator was a base rate of \$405.10 and a supplementary payment of \$58.70 which gave a total weekly rate of 463.80 and indeed the base rate and supplementary figures are the figures which currently appear in the award. We have then got a heading 1993 Through To 1997 Inclusive and a figure there of \$34 which are the safety net adjustments identified in the table between '93 and '96 which were outstanding, and they were flat increases across the board for all rates.

PN166

So we have added the \$34 to the base rate and supplementary payment and come up with the new figure of 497.80. Then, in 1998, again we have maintained the base rate and supplementary payment because they are not affected by the safety net adjustment. We have added \$14 because at that point in time, in 1998, the \$14 applied to rates up to and including \$550 so the 497.80 clearly attracted that \$14 and I will just provide you with a copy of the 1998 State wage case.

PN167

THE DEPUTY PRESIDENT: Exhibit A3.

### **EXHIBIT #A3 COPY OF 1998 STATE WAGE CASE**

PN168

MR FLANAGAN: Now, attached to A3 - or as a part of A3 - are the wage-fixing principles and at (vi) of the principles, page (vi) - or perhaps it is better to talk in terms of principles - at principle 8.1 the Commission identifies there the table safety net adjustments at (vi). Now, on that occasion there was a phasing-in between 14 July and 14 October you will recall, Deputy President, but for the purposes of this exercise the critical amount is the total safety net adjustment for that period.

PN169

So that rate of pay is varied in accordance with the 1998 State wage case and that gives you a figure of \$511.80. Then, in 1999, the State wage case provided for an increase of \$12 - or \$10 - and I would seek to tender a copy of that decision.

PN170

THE DEPUTY PRESIDENT: A4.

### **EXHIBIT #A4 1999 DECISION REGARDING STATE WAGE CASE INCREASE**

PN171

MR FLANAGAN: If I can take the Commission again to principle 8.1 of the decision which is at page (v) you will see there that the decision clearly identifies that rates of pay above \$510 per week receive a \$10 safety net adjustment. So the previous rate being 511.80 has been adjusted up to 521.80 and the safety net adjustment has been increased from \$48 to \$58 in accordance with A4. The next one is in 2000 and I would seek to tender a copy of the 2000 State wage case.

PN172

THE DEPUTY PRESIDENT: That is A5.

## **EXHIBIT #A5 COPY OF 2000 STATE WAGE CASE**

PN173

MR FLANAGAN: Now, I actually don't have the principles here so I have to take you to the relevant section of the decision and that appears on page 6 of A5 under the heading Point 2.

PN174

THE DEPUTY PRESIDENT: Page 11, isn't it?

PN175

MR FLANAGAN: Oh, yes, I am sorry. I beg your pardon, Deputy President, yes. On page 11 it clearly identifies that rates of pay will increase by \$15 per week so consistent with that the actual rate of pay has been increased to 536.80 and the safety net adjustment has been increased to \$73. In 2001, the Commission provided for an increase based on \$13, \$15 or \$17 depending on earnings and I would seek to tender a copy of the Commission's decision in respect of that matter.

PN176

THE DEPUTY PRESIDENT: A6.

## **EXHIBIT #A6 COPY OF DECISION IN RESPECT OF 2001 INCREASE**

PN177

MR FLANAGAN: Now, the effect of A6 was to provide for increases of a - well, in the particular case of this classification the previous rate being \$536.80 it fell between the rates of \$490 and \$590 which attracted a \$15 wage increase in accordance with that decision so the safety net adjustment has been increased to \$88 and the table rate has been increased to \$551. Then finally, in 2002, there was an award of \$18 under the State wage case and I would seek to tender a copy of that.

PN178

THE DEPUTY PRESIDENT: A7.

## **EXHIBIT #A7 COPY OF 2002 AWARD UNDER STATE WAGE CASE**

PN179

MR FLANAGAN: Now, the Commission on that occasion simply awarded an increase of \$18 per week across the board for all rates of pay so consistent with that the amount of \$18 has been added, giving a table rate of \$569.80. You will see, Deputy President, that in A1 the figure of 569.80 now reflects the proposed rate for the mill operator and surface operator consistent with that. Now, that methodology has also been applied in the case of the miner underground who comes up with a total of \$844.10 and a safety net adjustment

of \$104 and has also been applied in respect of the mechanical and electrical tradespersons who have a rate of \$647 and \$106 of a safety net adjustment, 647 being the table rate. Again, they are reflected in the proposed schedule of variation.

PN180

If we can then take the Commission in terms of A1 over the page to the fifth page of the amended schedule you will see that the A grade allowance is increased to the rate of \$13.90. Now, in order to identify the basis of that, it is necessary to go to the table attached to the correspondence of 12 March.

PN181

THE DEPUTY PRESIDENT: Yes.

PN182

MR FLANAGAN: Do you have a table, Deputy President?

PN183

THE DEPUTY PRESIDENT: Yes, sorry, yes, I do.

PN184

MR FLANAGAN: Now, under the heading Work-Related Allowances to the right-hand - we identified the current rate, which is \$11.10. The next heading which appears is 2.5 per cent. That is an error. It should have been deleted. It is a typographical error and has no effect on the rates which are about to flow. The rate then increases to \$11.75 reflecting a 5.75 per cent increase in work-related allowances. It is then increased to \$12 to reflect a 2.2 per cent increase in 1997. If you can turn the page, Deputy President, you will see then there are subsequent increases to reflect each State wage case from 1998 through to 2002 and that gives you the rate of \$13.90 which appears under the heading A Grade Allowance.

PN185

That methodology has also been applied to the underground allowance which takes you to the total figure of \$36.50, also to the first aid allowance which actually has become 76.9 cents. I was tempted to make that 77 cents, I must concede, but given that that seems to have been the approach we have left it at that and then the tool allowance has been increased to \$15.30. So that is the basis of the calculations in respect of the amended schedule. Now, in our submission, given that the metalliferous - or the controversy that once surrounded this award, which has on many occasions stopped it from moving forward in relation to the union's view that the industry awards conditions flowed from this award, that has been resolved so - and that is clearly no longer the case given the President's decision - so what we say is given that there is no impact on any other award of the Commission, given that there is no cost impact on the employer and given that there is an obligation on the Commission to take into account the public interest and a part of that obligation is to ensure that awards represent a genuine safety net arrangement, then in those circumstances the Commission ought to approve the application as sought and amended by A1. If it pleases the Commission.

PN186

THE DEPUTY PRESIDENT: Good, thanks, Mr Flanagan. Mr FitzGerald?

PN187

MR FITZGERALD: Thank you, Deputy President. I acknowledge the application made by Mr Flanagan. Our difficulty in responding within the time frame was simply that we just didn't have the hand-written notes which had been produced to the Commission to make an assessment about the validity of these applications and I don't in any way point any blame to Mr Flanagan there. In our situation, firstly we were unable to get instructions from someone at Rosebery given that there is no one in the position of HR manager at the moment and we were trying to confirm instructions from another source, which we finally did. But the hand-written figures do assist us in consenting to the application. I apologise to the Commission and Mr Flanagan if we appear to be obstructive here, but that is not the case; we just wanted to be absolutely certain that the figures which have been presented to the Commission do reflect an accurate picture of the wage increases which have been available through the various State wage cases.

PN188

Now, the difficulty is, I suppose, that the unions for whatever reason have not chosen to make application when they could have at the time back in the early '90s and that has created somewhat of a difficulty. We don't concede there has been a controversy regarding this award. We always believed that this award has been an enterprise award and it could have been varied but it appears that the unions for their own reasons haven't chosen to flow those increases through onto this award and to happen all at once sometimes poses some difficulties. So the reason why we have been a bit cautious is simply that.

PN189

We weren't certain but we now are certain that the increases which have been applied for and inherent in the applications are valid and do reflect those under the State wage cases as Full Bench decisions. So for those reasons, Deputy President, we consent to the application.

PN190

MR FLANAGAN: There is just one point, Deputy President. We don't accept - and we don't intend to debate it - we don't accept that the unions have not previously attempted to flow this on. We have, but for reasons outside the circumstances of the Pasmenco work force it has always been opposed by the employers; that is a matter of record, if it pleases the Commission.

PN191

THE DEPUTY PRESIDENT: Well, I can indicate to the parties I will hand down a written decision in due course. It will be in favour of the application, or the amended application, as outlined in exhibit A1 and the operative date will be from the first full pay period to commence on or after today. That concludes this matter, thank you.

**ADJOURNED INDEFINITELY**

**[11.55am]**

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