



Tasmanian Industrial Commission
Industrial Relations Act 1984

T No. 9019 of 2000

IN THE MATTER OF an application by
The Australian Workers' Union,
Tasmania Branch to vary the Farming
and Fruit Growing Award

Re: Clause 7 - Definitions

COMMISSIONER SHELLEY

HOBART, 11 December 2000
Continued from 11 October 2000

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING RECOMMENCED 10.50am

COMMISSIONER: Thank you. The appearances remain the same, I note, and this matter was actually to come on on 8 November for a report-back and that was postponed until today. Mr Flanagan?

5 MR FLANAGAN: Thank you, commissioner. Commissioner, unfortunately, we are unable to proceed to hearing with the matter today. Perhaps if I give you some background to it.

On the last occasion that the matter was before you the commission was informed by a representative of the TCCI, on that occasion I think
10 Mr Cameron, by writing, that because this matter touched on broader discussions between the TCCI and the TTLC that it ought to be adjourned and the outcome of those discussions which were expected to be imminent, which I think was the word on the occasion, would be such that it would be inappropriate for this matter to move forward in
15 isolation of those discussions.

Following those proceedings, the AWU wrote to the TTLC regarding the matter and sought confirmation that in fact there were broad discussions taking place between the Labor Council and the Chamber in relation to the issue of training generally and the extent to which
20 this application impinged or impacted on those discussions.

The Labor Council subsequently organised a meeting of its affiliates and invited the AWU to attend that meeting. The outcome of that meeting of the unions was to identify that, firstly, this application does not impact upon the discussions which are taking place between the
25 Labor Council and the Chamber and, secondly, that those discussions still have a long way to go, if you like.

The discussions which are between the Labor Council and the Chamber are concerned with the appropriate form of industrial regulation for people engaged on training arrangements and how that
30 regulation should sit or fit with the traditional regulation of apprentices. Those are the discussions which are between the Chamber and the Labor Council, commissioner.

This application deals with a very different proposition and that is the question of accrediting to a trainee who has completed a certificate level 3 competence accreditation or equivalent recognition to that
35 traditionally associated with a person who has completed an apprenticeship. The issues are very different. We are dealing here, not with how employment should be regulated during a traineeship but what recognition an employee should receive once they have completed
40 that traineeship in the context of a category or classification within an award and the appropriate rate of pay to be attached to that category or classification. That's what this application concerns.

5 There were discussions between the AWU and the TFGA around the proposition that a person who had completed a certificate level 2 and a certificate level 3 being recognised as trades equivalent. Upon further investigation into that issue the union has formed the view that that would be inappropriate, that certificate level 3 itself is the trades equivalent qualification and accordingly the variation that the union seeks should be framed around a person having completed a certificate level 3.

10 That's not an agreed position. We would like to have some discussions with the TFGA, some further discussions on that point, and also with the TCCI. However, I believe that having regard for the discussions we've had previously we're unlikely to reach a consent position. There seems to be some concern on the part of industry that in certain circumstances an employee can progress or attain a certificate level 3
15 qualification without having previously obtained a certificate level 2 qualification. That seems a bit odd to the union but if there is a difficulty there it is one which needs to be addressed by those that regulate training, not those who regulate industrial relations. The focus of this application is not on the training and the delivery of the
20 training or the accreditation of the training, it is on the rate of pay associated with the person who has a qualification.

I think that probably defines what may indeed be a debated application which is presently before you but we're not in a position today, commissioner, to have that debate. In those circumstances, what the union would be seeking, is that the application be adjourned, that the union have those discussions with the employers in relation to what this application concerns, which is quite distinct from the discussions between the Chamber and the Labor Council and that the matter be listed for hearing at a time convenient to the commission. If
25 it pleases the commission.
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COMMISSIONER: Before you sit down, Mr Flanagan, when this was before me before on 11 October, it was indicated to me that there was some urgency about this application and I believe that there may have been some particular person that may have been affected and I was -
35 perhaps Mr Rice might better address this - I was told by Mr Rice that had there not been the delay to allow the more global discussions to take place, then the matter may well have gone forward by consent at that stage. What has changed since then?

MR FLANAGAN: A couple of things. Firstly, I don't think the urgency has disappeared. I think that is still the case but the union, having
40 further considered our position in relation to the accreditation of employees, is no longer prepared to accept the proposition that you must complete both certificate level 2 and certificate level 3. Our view is that is you've done level 3, then that's it. You're trades equivalent.

45 If that generates a problem for those who provide training and those who seek to utilise certificate level 3 people while they're being trained,

then that's their problem and a problem for the industry to address but it should not be a problem, that an employee has to shoulder because those who provide training, those who develop the arrangements and those who employ them as trainees on reduced rates of pay, haven't addressed the problem.

COMMISSIONER: Thank you. We'll go in the same order as we did last time, which means you, Mr Rice?

MR RICE: Thank you, commissioner. I'll just amend the appearances, commissioner. Appearing with me this time is Mrs B.L. Roney from the TFGA, Tasmanian Farmers and Graziers Employers Association.

To address the points raised by Mr Flanagan, you're quite right, we were prepared to - if we were going to look at the global issue regarding training, that was our concern and the concern of the commission and the parties when this matter first came before you and we thought that that ought to have been addressed and we still believe that, that the whole issue of training and what constitutes suitable training and whether it needs to be certificate level 2 and certificate level 3 and how we're going to pay those and what the actual accreditation is that comes out at the end of that training, seeing that we've had a hundred years of apprenticeships and now we have something called, new apprenticeships and everything else associated with it. There's a great deal of confusion out there.

Notwithstanding that, we were prepared at that particular time at our first hearing, when we first came before you, was to consent to the application on the basis of - and this is still our position, that a person before they can gain tradesperson status they must have completed certificate 2 and certificate 3 and that's based on - we haven't brought - as this matter was only coming on to seek an adjournment was my advice from the AWU today, we haven't brought the necessary people from TAFE just to explain the situation, as people progress through there.

I understand what certificate 3 says but there is some underpinning knowledge that people have and we will remain firmly to that position, that they should do certificate 2 and certificate 3 before our industry will see them as trades equivalent and that's what we will intend to argue before you.

COMMISSIONER: Is this the appropriate jurisdiction to be arguing that?

MR RICE: I believe it is. Most definitely, this is the appropriate jurisdiction. There is already a trades rate determined by the commission. We have in there somebody that has completed an apprenticeship or equivalent at the present time, is the entry level to obtain that rate of pay so what we're going to decide now in my view or

5 we will adduce evidence and give you the opportunity of weighing the facts in regard to this matter is what constitutes the person that should then receive this trades wage, and as I said, we have a view which was in accord with that of the AWU and now isn't in accord with the AWU. Our position has never changed in that regard.

10 I believe it is the appropriate jurisdiction. What underlies - perhaps it would be easier if we went somewhere else but it would seem if it went to another jurisdiction to determine that we could be still here when we're due to retire, the way they look at training arrangements at the present time and that's meant to be a criticism of the training people and everything else associated. I don't resile from that for the mess that we're in at the present time regarding training and I think the commission has some sympathy towards that.

15 We will have some discussions and if we can have some serious discussions with the AWU and TAFE Tasmania as to what they see are the current deficiencies in the system relating to certificate level 3 only. If it please the commission.

COMMISSIONER: Thank you. Mr Dilger?

20 MR DILGER: Thank you, commissioner. I appear, upon instructions, from Mr Cameron of my organisation, so I don't have any detailed submissions in regard to the matters raised by Mr Flanagan and Mr Rice but what I would say is, we agree that the - we certainly don't provide any opposition to a further adjournment to enable discussions to take place and I also agree on the point raised by Mr Rice in regard to the Industrial Commission as being the appropriate commission because what you are seeking to determine is, what is this person, or what level of training is this person who is going to be the equivalent of a tradesperson going to have achieved. I think if there's a jurisdiction which has the ability to determine that conclusively, it would be the Industrial Commission.

We agree to the adjournment and we would look forward to further discussions with both Mr Flanagan of the AWU and Mr Rice of the TFGA.

35 COMMISSIONER: Thank you. Unless you've got anything further to add, Mr Flanagan, I will grant the adjournment and I adjourn this matter at this point.

HEARING ADJOURNED 11.05am