

HEARING RECOMMENCED

COMMISSIONER: The same appearances as before?

MR FITZGERALD: Yes, thank you, commissioner.

5 COMMISSIONER: Now, Mr Baker, have we had discussions about this matter, Mr Baker?

MR BAKER: Well, we did have some discussions with Mr Watson of the TCCI when this matter was previously before the commission in October of last year and at that time - well, firstly if I just go back a point - this application deals with the introduction of supplementary payments for junior employees and apprentices.
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Up until recently, apprentices and junior employees employed under the terms of the federal Metal Industry Award did not receive supplementary payment. As a consequence of that, employees under the state Metal and Engineering Industry Award, that is, juniors and apprentices, do not receive supplementary payments.
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Now in relation to the wage rates generally within this award, they in fact mirror the federal award and they have done so now for the best part of a decade or more. In fact it's probably closer to fifteen years.

This award grew out of two or three old awards of the commission which had their genesis in the old Wages Board days and the principal one of those of course was the Mechanical Engineers and Founders Award.
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MR FITZGERALD: I think Mr Forster had something to do with that, didn't he?

25 MR BAKER: That's quite correct. Now at the time - well, I'll go back - in about 1986/1987 there were discussions federally about restructuring of the federal Metal Industry Award. At that time it, consistent with the Mechanical Engineers and Founders Award, contained around about three hundred separate classifications and federally there was a decision taken that indeed those classifications should disappear - those individual classifications should disappear - and we'd have a new format - a new format of classifying people consistent with skills and competencies, and that structure appears now in the federal Metal Industry Award and it also appears in our state Metal and Engineering Industry Award.
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The classification structure is indeed identical and as indeed are the classification levels, and it was agreed at the time when all that was done that in fact the wage rates would be identical and there were very valid reasons for that to occur and not in the least of which of course was that it was important, both from an employer perspective and an employee perspective that the wage rates that apply in the industry are
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consistent, that is, an employer who works under a state award or an employer who works under a federal award, the wage rate for a trades person or a technical officer or a process worker ought to be somewhat the same. In fact in discussions with the old MIAT - I think that's what they're still called actually - and the TCCI at the time, it was felt that it was appropriate that this would go some part of the way to eliminating, if you like, unfair, competitive practices between employers and as far as the employees were concerned, there was a consistency that applied across the employment spectrum.

That situation has in fact continued on and if you look at the state Metal and Engineering Industry Award, you will see provisions for such people as engineering associate trainees which is a unique provision which provides for the payment of fees and text books associated with a technical officer undergoing training. That provision originates out of the Metal Industry Award and was transposed in its entirety into the state structure as indeed are all the other provisions relating to the supervisory grades, professional grades, technical grades, trades grades and process employees and trades assistants.

There has been a very long association between the wage structures and you will recall, sir, that last year you, yourself was part of a discussion between Mr Watson of the TCCI and myself concerning the introduction of the new evaluation system to be part or part of the state Metal and Engineering Industry Award. And you would recall the discussions which flowed from its application within the federal award and the introduction of the local Automotive and Engineering and Manufacturing Industry Training Board in the process of evaluation of classifications and the application of competency standards to people engaged in the industry.

There is a view certainly supported at that stage by the TCCI and ourselves that in fact the classification structure, the competency standards, et cetera, should apply.

Indeed, if a person, whether they work under a federal award or a state award wished to avail themselves of promotion or of training, there is a training program that has been developed and is undergoing ongoing development to provide training in the metal and engineering sector. There is also the whole range of competency standards which apply to this sector of the industry, not to the Metal and Engineering Industry Award or the federal Metal and Engineering Industry Award, but to those awards collectively and to the industry as a whole.

And that is the basis of the application that was made to you; that we view this as the industry as a whole, not a part of the industry. This is a part of the industry that needs to be examined and we would submit to the commission, should be remedied consistent with the balance of the industry and one of these submissions that was put to you when this matter was last before you was that there ought to be a consistent rate of pay for apprentices - particularly apprentices - and juniors

working in the industry of the metal and engineering industry. Not that we have differential rates of pay applying dependent upon whether or not a specific employer chooses to belong to the Metal Industry Association of Australia, or the Australian Chamber of
5 Manufacturers, or in turn chooses to belong to the Metal Industry Association of Tasmania or simply belongs to the TCCI. It is our submission that - and it was at that stage, that there ought to be a consistent approach as far as the wage rates were concerned. And at
10 the hearing in October of last year, that was pretty well the premise upon which the application was made.

In so far as the principles are concerned, we never quite got around to addressing that issue, but I am prepared to do so following the response - well, I assume there will be a response from Mr Fitzgerald -

MR FITZGERALD: I think so.

15 MR BAKER: - that we would submit that in fact they do - I beg your pardon, I skipped a point - Mr Watson on behalf of the TCCI undertook, as I recall, to have discussions with the employers in the industry and to advise the commission of their attitude towards the claim as presented to the commission.

20 And the claim before the commission is to apply supplementary payments to junior employees and to apprentices and those supplementary payments would in fact reflect a percentage of the trade rate or a percentage of the appropriate non-trade rate as designated in the adult section of the award and they would be phased in in four
25 equal instalments over a two-year period or less if we can get agreement with the TCCI.

Unfortunately, as we know, I unfortunately was off for a period of some time and the matter was advised to the TCCI in December of last year that it would now be on in February of this year and I suppose I'm now
30 in a position, having provided you with that background, of seeking from the TCCI their position in so far as this matter is concerned. The only thing perhaps that I should advise the commission at this point in time, that supplementary payments for junior employees and apprentices was awarded by a full bench of the commission -

35 MR FITZGERALD: Which commission?

MR BAKER: The full bench of the federal commission - in Print 7144.

I think, commissioner, I should pause there and allow Mr Fitzgerald the opportunity of responding in order that we may sort of have the
40 position of the TCCI before I would address the bench on further comments in relation to the support of the claim and also in respect of the wage fixation principles which would enable you to hopefully make a decision in favour of our application.

COMMISSIONER: Yes, it might help all of us, Mr Baker. Yes, Mr Fitzgerald?

MR FITZGERALD: Yes, I think in fact I support that approach although, you know, normally it would be for an applicant to fully
5 prove his case and that would be certainly a requirement to address the wage fixing principles, but I think it would shortcut the process, if I do make some particular comments now and maybe if I address the principles as a first issue because I think that will then determine the course of it. But certainly we would reserve comments made in respect
10 of the financial impact of the claim and the position of members who observe this award.

Again, Mr Commissioner, it's not dissimilar to the matter which you heard earlier in terms of the applicant having to prove the claim in accordance with the commission's principles and these are the
15 principles which bind this commission, not the federal commission, and I think, in my submission, it's very clear that the principle in respect to increases which are outside the safety net increases, and quite clearly this is, the effect of it, if I can just make mention, in respect to unapprenticed juniors at the twenty year age bracket, it will
20 amount to approximately, at the May date next year - approximately a forty dollar increase, so that's obviously clearly in excess of the safety net.

In respect to apprentices a similar sort of increase. Now in that respect, clearly principle 13 has application and if I can quote from
25 that:

*An application to make or vary a minimum or paid rates award [and if I can interpose, in my submission this is a minimum rates award] for wages and/or conditions above or below the award safety net shall be referred to the President for consideration as a
30 special case. A party seeking a special case must make an application supported by material justifying the matter being dealt with as a special case. It will then be for the President to decide whether it is to be dealt with by a Full Bench and whether or not it constitutes a special case*

Exceptions to this process are applications which fall within the provisions in the Enterprise Bargaining and First Award and Extension to an Existing Award Principles.
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And then the principle goes on principally to consider the matters which should be taken into account in respect to paid rates awards.
40 And clearly that isn't one but I just note out of interest principle 13.1.9 - and I quote:

that reliance on nexus itself provides no justification for a paid rates adjustment.

5 Now clearly I concede that refers to a paid rates award but it does allude to the notion that nexus itself is not enough and that's what Mr Baker again is seeking to rely on.

10 So in summary, what this principle requires the applicant to do is in fact to make out a *prima facie* case to the president. So, Mr Baker must, in accordance with the principles, I'd submit, seek a full bench hearing to firstly - and also support it with material - to justify that it be treated as a special case and then it's for the president to determine whether it is a special case and determine it on its merits in accordance with the remainder of principle 13.

15 Now Mr Baker has already indicated that in terms of the federal award that matter was determined by a federal commissioner although we haven't seen the case which justified that. I think it was Print 7174 - I'm not sure of that. I think that was the one which you referred to but, again, I'm happy to accept that on face value.

20 Now the federal commission, the counterpart of this commission, obviously saw, because of the magnitude of such case, as I said, I've already given some example of the increases which are sought by this application, saw the need in accordance with the federal commission's principles to vary it only by a full bench.

25 Now I would submit - and I'll reserve my right to make further submissions in respect to other matters which Mr Baker has raised, but our position is that we have surveyed members who are bound to this award and the overwhelming response, because of the magnitude of it, is one of rejection.

30 Now that position may not be able to be maintained if Mr Baker can make out a special case but that is, I'd submit, the only way this commission can handle this matter.

35 So again, I don't want to be seen to be difficult in respect to it but if the principles are there and bind all the parties to it, the principles must be complied with in every respect. And it would, in my submission, bastardise the principles if we were simply going to cop what happened in the federal commission.

Now again, my submission is that this matter be adjourned to allow Mr Baker to consider that position. If that's not agreed to then we would make further submissions in opposition to the application made by Mr Baker.

40 COMMISSIONER: Yes. A couple of points, Mr Fitzgerald. The supplementary payments, are you actually submitting that they no

longer - the system for implementing them no longer applies - it has to go to a special case? Is that what you're saying?

MR FITZGERALD: No, I'm relying only on the fact that the application is something significantly in excess. Whether it relates to supplementary payments or base rate doesn't really have any relevance in my submission. The fact is, what Mr Baker is seeking by his application is to adjust the award significantly in excess of the safety net process.

COMMISSIONER: But the safety net is supposed to be on top of the supplementary payments, isn't it, or side by side ..(inaudible)..

MR FITZGERALD: Side by side; I don't think that really has, with respect, commissioner, a great deal of relevance to the application. The effect of it is, as I indicated, a forty dollar increase in some cases. So that is clearly something which is - how that increase is made up, whether it base rate and supplementary payments is not relevant, in my submission. The fact is that it does amount to a significant increase.

COMMISSIONER: I certainly agree with you and take note that it is a significant increase but I'm not altogether, without - I haven't got the guidelines here - not altogether convinced that it has to go via a special case.

MR FITZGERALD: Well, that's a matter for your determination.

COMMISSIONER: What about also supplementary payments, Mr Fitzgerald, you might be able to help me. My understanding is that they have to be by agreement, is that right?

MR FITZGERALD: Look, I'll have to take that on notice. I'm trying to find where the supplementary payment issue is in fact addressed by the commission's wage fixing principles and I've yet to find that, so I'd have to take that question on notice.

COMMISSIONER: Yes, well it does lead me to the situation perhaps. That's all thanks, Mr Fitzgerald.

MR FITZGERALD: Thank you.

COMMISSIONER: We'll go off the record again thanks.

OFF RECORD

35 **ON RECORD**

COMMISSIONER: Thank you, gentlemen. I think we're all aware of the issues involved. I firmly believe this matter is between the parties and it would be a great disappointment to me if the parties come back without a large degree of agreement on this matter.

However, be that as it may, I will adjourn it now with a strong recommendation that the parties meet as soon as possible to discuss it. I will consult with the president to see what he thinks about my own view that it ought to be processed through the supplementary
5 payment concept to just see what the situation there is. If it's significant I'll relay that to the parties but it's certainly - and this is, as I repeat, between the parties. It ought to be at this stage.

The matter of the nexus again is a serious matter and that ought to be maintained between the parties. I had experience years ago in similar
10 sorts of things with Mr Fitzgerald and it's always a sensitive area with the employer. Nevertheless, I think that nexus, I think, has broken down since - as a lot of other things of course - but certainly it's not beyond arbitration - the nexus - but I think primarily it's a matter between the parties.

15 So I'll adjourn now. I'll await to hear from you, Mr Baker, as to how you're getting on and then we'll decide when the matter will resume.

HEARING ADJOURNED