



Tasmanian Industrial Commission
Industrial Relations Act 1984

T No. 7268 of 1997
[Now joined with:
T No 5998 of 1995
T No 6275 of 1996
T No 6278 of 1996]

IN THE MATTER OF an application by
the Automotive, Food, Metals,
Engineering, Printing and Kindred
Industries Union to vary the Metal and
Engineering Industry Award

Re: Clause 8 - Wage Rates, section (3)
Engineering Production Juniors -
Unapprenticed and (5) Apprentices, by
the application of Supplementary
Payments to all wage rates as
prescribed

COMMISSIONER IMLACH

HOBART, 13 December 2001
Continued from 6 December 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 10.33am

COMMISSIONER: I'll take appearances.

MR P. BAKER: I appear for the applicant organisation in all matters – P. BAKER.

5 COMMISSIONER: Thanks, Mr Baker.

MR A. FLOOD: Thank you, commissioner. ANDREW FLOOD, from the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER: Thanks, Mr Flood. Now where are we, Mr Baker?

10 MR BAKER: Commissioner, Mr Flood and I have had another meeting and I have – well, I understood that we had exchanged a document or two since that discussion but Mr Flood advises me that the e-mail that I have been sending him is still wandering around in space somewhere or it's gone to an address unknown and I'm sure they must be having some mirth at receiving a 100 page document
15 from me. But nevertheless, I believe that we can actually draw this matter to a conclusion if not today then very nearly into the future.

20 What I would propose to you, commissioner, is that I hand to you a document which is the composite deliberation of Mr Flood's and my deliberations over the last couple of years. There are a couple of matters which no doubt Mr Flood would like to comment on but other than that I think the document that I will give to you today is representative of our agreement in so far as the document is concerned.

25 Now I have provided by way of e-mail an electronic copy to your associate so that it's there on the file. I also have a transitional table which I'll also hand to the commission in so far as what we've done with the current award provisions and where they will be found in the new document together with a couple of provisos that have either been deleted, replaced or added in a couple of instances.

30 So without further ado, I would hand a copy of the document to you.

COMMISSIONER: Did we ever mark such a document before? I don't think we did.

35 MR BAKER: I don't think we did, commissioner, because they were always sort of floating around one way or another and we weren't too sure whether they were coming or going.

COMMISSIONER: Yes. Well, perhaps we'll mark this one **EXHIBIT AMWU.1**. You don't mind if I shorten your union's initials to that, Mr Baker?

MR BAKER: No. We actually did have an application before the registrar to actually shorten it and we received a swathe of objections so we decided at the end of the day that it really wasn't worth the effort and we keep the current registered name and we continue to use, if you like, the AMWU as the trading name.

COMMISSIONER: Right – AMWU.1.

MR BAKER: The first two pages I indicated to you is the transition table but perhaps, sir, if I was actually to walk you through the document and we could actually come back to that and I'll show you what in fact we've done.

At page 1 that is simply the index – the title in the index and the subject matter as to how it should be set out and I would say that that's consistent with other awards of the commission which have been reformatted and it is simply that.

As far as the scope clause is concerned at page 2, we've actually moved the scope clause from the definition provisions and it's now up front so when you get to page 3 of the award you'll see the actual definition of what the metal and engineering industry comprises of and there's no change to that clause. It's other than we've simply moved it from the definitions clause to up front in the scope clause. So that's where that is.

The date of operation of course is subject to a decision of this commission.

5 – Award Interest and Parties Bound – that has now been rewritten consistent with the provisions of the commission - or the direction of the commission, I should say.

Supersession clause – well that will be dealt with is as per the award.

Clause 7 – Definitions – the only issues that appear in Definitions now are what was taken out of the general definitions provisions which is Gross Vehicle Mass, Ordinary Time Earnings, Sunday and Year. Now the only change – and this is the change that was actually there – Mr Flood and myself had a discussion on what was meant by the terminology or equivalent and we did have some discussions and I unfortunately didn't quite conclude those discussions at the end of the day with Andrew in relation to that, so this definition actually was in the agreement – or in the document – prior to our previous discussion, but perhaps we'll have some further talks in relation to that matter at a later stage. And that phrasing – or that phrase 'or equivalent' means is actually derived from the federal Metal Industry Award. That's the current equivalent – sorry, that is the current phrase which translates what 'or equivalent' means and we'll come to that later on.

Under Part 2 – Contract of Employment –

COMMISSIONER: Just before you do, Mr Baker, you referred to the definition of the industry.

MR BAKER: Yes.

COMMISSIONER: It doesn't seem to be in the definitions.

5 MR BAKER: No, it's not, sir, we've taken it out. It's currently within the definitions. The current scope clause in the Metal and Engineering Industry Award says:

This award is established in respect of the Metal and Engineering Industry (as defined).

10 COMMISSIONER: Yes.

MR BAKER: And then you need to go to the Definition clause and then you find where it spelt out.

COMMISSIONER: Yes. But what you're saying is the Scope is now the definition, are you?

15 MR BAKER: Yes.

COMMISSIONER: So we should cross out '[as defined]' there – page 2?

MR BAKER: I've left it in there have I still?

COMMISSIONER: You have.

20 MR BAKER: I have? I do beg your pardon.

COMMISSIONER: That's all right. So we'll cross it out?

MR BAKER: Yes.

COMMISSIONER: Yes – proceed.

25 MR BAKER: I do beg your pardon. So that's where it is now. So when you get to page 3 you can have a look very quickly as to the industries in which the award applies,.

COMMISSIONER: Right. Part 2.

30 MR BAKER: Part 2 – Contract of Employment – is as is the award. There is no change to that at all on pages 6 and 7. It's just simply a change of title.

On page 8 – Wages and Related Matters – Wages – there is a slight change to the wording of this, and that is, the last two lines of this. It now reads:

This classification table shall be read in conjunction with the Classification Descriptors as prescribed in Clause 5, Part 3 of this Award.

5 And that, sir, is the classification table which defines whether somebody is a production employee, a trades person, technician, professional engineer, et cetera. So it further illustrates where people sit in the table.

COMMISSIONER: Is that expression Level C14 or whatever it is? What does that mean?

10 MR BAKER: Yes, I'm just coming to that now, sir.

COMMISSIONER: Right.

15 MR BAKER: When the federal award was derived, the classification table ran from Level C14 through to Level C1. When we set to and made an application to vary as it was at that stage the Mechanical Engineers and Founders Award to incorporate a similar classification structure into this award, the commissioner at the time viewed that in fact we should actually go, if you like, from 1 to 14 rather than 14 to 1.

20 Now that concept has remained except of course, sir, it is now, we believe, it is appropriate to actually give effect to what is a consistent level of terminology that applies in the metal and engineering industry. The classification C10 – Tradesperson – sir, is recognised throughout the length and breadth of the metal industry and regardless of whether you work under the federal award or the state award, there is an acceptance that C10 is the trade rate.

25 The other thing which has happened as far as our proposal is, is that where there are points within the scale which don't actually match up with the federal position, we've actually included them as an (a). So, for example, if you look at page 8, under C12 which is the Production Employee-Level 111 there is then a C12(a) which is the Administrative/Clerical Employee Grade 1 and so forth and so on
30 through the document. So, sir, there has been a slight change as far as that is concerned but at the end of the day there's been no change to the wage rates or any other configuration as far as the wage relativities are concerned. All we've done is actually realigned them so
35 they now align themselves to the federal Metal Industry Award or the Metals, Engineering and Associated Industries Award.

COMMISSIONER: So mean on page 9 we put a C next to 10 – Level 10 – C10?

MR BAKER: Yes. I missed that one.

40 COMMISSIONER: I don't claim to be dredging them all either, but that's one that came to my notice. Yes, that's all right, Mr Baker.

MR BAKER: And that goes through to page 12 which is Piecework.

5 The other thing which is – I do beg your pardon – before we go to that, in relation to the Trainer/Supervisor/Co-ordinator, the current rates of pay for Trainer/Supervisor/Co-ordinator are found within the definition provisions of the award. Now it just seems that it's illogical to keep those in the definitions. So it was believed appropriate that in fact they should be found under the wage rates where in fact they more rightly belong. So that's a change.

Under Piecework at page 12, there is no change to the award.

10 Engineering/Production – Juniors, Junior Employees, Apprentices – there has been no change to that at all. The only change that has been made of course, sir, is the wage rate levels – the applicable wage rate levels. Other than that there has been no changes to that at all.

15 COMMISSIONER: Does that mean that longstanding unapprenticed juniors is going to be amended does it? The rate? Do you remember that? You had a claim before us.

MR BAKER: Yes, that's been resolved.

COMMISSIONER: That's included in their?

MR BAKER: Yes, that's been resolved.

20 COMMISSIONER: Thank you.

MR BAKER: The Trainee – Engineering Associate, remains unaltered.

At Clause 3 – on page 16 – Supported Wage System, there is no change to that at all.

25 The Classification Descriptors – there is no change at page 19 at all to those.

The C14 on page 20 – there's no change to that.

13 – there is no change.

12 – there is no change.

12(a) there is no change.

30 11 – there is no change.

COMMISSIONER: I was hoping you were going to say page 98 or something.

MR BAKER: No, no, well I can do that because the slight changes – we've added – there's been a slight change as far as the trade levels are

concerned by the inclusion of, (iv) Or equivalent. The previous provision actually was simply a catch-all clause about a person exercising a level of skills and knowledge at this level.

5 Now what has been included is this line or equivalent and there is a definition provided for equivalent which means that if you claim to be a tradesperson and you do not have a trade certificate, you need to be able to demonstrate a level of competency and skills consistent with the learning outcomes as provided by the national metal and engineering industry training package and there is an assessment
10 process that is then to be done only through the national Metals Industry Training Board or the state equivalent of that body and that's the definition which is contained in the front of the document which explains what 'or equivalent' is. So it's simply not somebody fronting up and saying, I've got these half dozen certificates that I'm the
15 equivalent of a tradesman. It needs to be able to be demonstrated and assessed by an independent assessor.

That is the only change to the document until you get to nominally page 36 when you start talking about people progressing towards higher education learning outcomes and the phrases have been, for
20 example, *6 appropriate modules towards a National Diploma* and underneath that an *Advanced Diploma*. They are the new qualifications which people aspire to.

So the old concept of an associate diploma or a higher engineering trade certificate have been removed.

25 So they're the only other changes which have been made.

COMMISSIONER: Is that page 36, Mr Baker – (d) . . . or equivalent? Is that the same significance as 'or equivalent' previously?

MR BAKER: Yes.

COMMISSIONER: So would that be added in this time or what?

30 MR BAKER: I'm sorry, sir, you've lost me for a second.

COMMISSIONER: *Wage Group: C8* – page 36.

MR BAKER: Yes.

COMMISSIONER: *A Special Class Engineering Tradesperson . . . (a), (b), (c) – (d)* it's got *or equivalent* at the end.

35 MR BAKER: Yes. I beg your pardon – yes, it is.

COMMISSIONER: That's an addition is it?

MR BAKER: No, no, that's actually as it is now.

COMMISSIONER: It's already there.

MR BAKER: It's already there.

COMMISSIONER: But it still has the same meaning as the definition.

5 MR BAKER: It has the same meaning though. You need to be able to satisfy the educational outcome.

COMMISSIONER: Thank you.

MR BAKER: And there are no further changes through any of the wage group levels until the end.

COMMISSIONER: Page 98.

10 MR BAKER: 62 actually.

COMMISSIONER: Yes? ..(inaudible)..

MR BAKER: And that takes us to Payment of Wages and there's no change to that at all.

65 – Mixed Functions – no change.

15 Superannuation – there is a new provision to replace the existing superannuation provision that's currently in the award and this is a provision which was agreed to between the parties, that is, the TCCI and ourselves, in respect of the Automotive Industries Award and subject to a couple of minor changes so that it actually reflects the
20 metals award as opposed to the auto award. This is the provision that unfortunately, as I've indicated, Mr Flood has not seen that provision as yet, so I just table that for advice to him. But it is a consistent provision of this commission.

25 In respect of Part 4 – Allowances, there's been no change to Disability, Tool Allowance, Leading Hands, Special Rates – they all remain the same.

Through to 71 – Travelling and Board – no change to that. The Motor Allowance – no change other than to reflect the recent decision of this commission in respect to the quantum.

30 Likewise Meal Allowance.

Part 5 – Hours of Work – there has been no change to that either.

Overtime – likewise.

Holidays with Pay – at page 78 – there is no change.

79 – Shift Work – unchanged.

5 – Meal Breaks at 83.

6 – Extra Rates Not Cumulative – there is no change to that.

Part 6 – Leave and Holidays with Pay – there is no change to that either.

5 Likewise with Sick Leave at page 88.

Carer's Leave at 89.

Clause 4 – Parental Leave – this is where Mr Flood and I got a trifle – at page 92 –

10 COMMISSIONER: That should just about take us to page 1000, shouldn't it?

15 MR BAKER: Page 92 there is Parental Leave. All that requires to be inserted there is the standard parental leave of the commission. At that stage when we started there was a to-ing and fro-ing that was going on about the rewriting of the parental leave clause so we've left that so that just needs to be inserted.

The Bereavement provision is unaltered, as is Holidays with Pay at page 92.

20 Over the page at Part 7 – Consultation and Dispute Resolution – at 1 – Disputes and Grievance Procedure, there is actually a further paragraph – two paragraphs that have been added to the disputes procedure provision which is (g) which talks of – and this goes into if there is a dispute about the reclassification of the employee within the award, then this is the provision that then applies. This is a further indication that simply says:

25 (a) *The procedures for reclassifying employees under this award are set out in the National Metal and Engineering Competency Standards Implementation Guide distributed by the Manufacturing, Engineering and Related Services Training Advisory Board . . .*

30 (b) *Without detracting from any of the processes set out in any disputes shall be handled in accordance with the Disputes and Grievance Procedure as outlined herein.*

So if an employee is dissatisfied, there is actually – it then returns itself to the disputes and grievance procedure as set out in the award.

35 COMMISSIONER: Yes. Just the terminology there – (b) – *Without detracting from any of the processes set out there in or is therein?*

MR BAKER: Set out therein.

COMMISSIONER: All one word.

MR BAKER: Therein it should be – yes, one word.

COMMISSIONER: All right. Thank you.

5 MR BAKER: *Any disputes shall be handled in accordance with the Disputes and Grievance Procedure as outlined herein.*

COMMISSIONER: Yes.

MR BAKER: Wonderful. Terrific English. Underneath that we have Structural Efficiency – unchanged.

Over the page at 94 is Training – unchanged.

10 And that takes us through to Part 8 on page 97 which is, Protective Clothing, Equipment and Tools – and there is no change to that document either – or that part of the award, I should say.

15 And at Part 9 – Award Compliance and Union Related Matters – there are two changes there at 1 and 2 – at Time and Wages Record and Right of Entry – which reflect the provisions of the *Industrial Relations Act*.

20 And as I indicated to you on the front of the document there is a transitional table which shows the current clause numbers and what's happened to them, where they're going, the proposed part number and the proposed clause number, and you'll see that there are a couple of the appendices at the bottom of that have been deleted and they are both the old transitional tables which classified originally the 300-odd classifications in the metals area into the 10 and likewise with the clerical structure which also had a translation into it. There is a list of
25 other bits and pieces which we've since added to the document – the procedures for classifying employees through to a separate provision. The others in fact are separate provisions which were currently found within the document. They were actually subclauses of principal clauses.

30 Sir, my submission today would be that the document as tabled would form the basis of the new award and that would be subject to Mr Flood having the opportunity to pursue – sorry, to view – and consider the superannuation provision and for us to finalise our discussions on the issue of the phrasing or equivalent and of course if there is any other
35 matter which Mr Flood wishes to take up with us. But I would view at this stage, sir, it's really a question of process rather than any fundamental differences between us. So it's really a question now of working through the document and with the help – or assistance, I should say – of your associate who will no doubt do the bulk of this
40 work from now on in.

COMMISSIONER: Subject to what Mr Flood has to say, yes. Thanks, Mr Baker. Yes, Mr Pyrke?

MR PYRKE: Commissioner, I'm here for the matter at eleven o'clock, I haven't really got a view on this one.

5 COMMISSIONER: I see, you're not really part of it. Right, thank you. Yes, Mr Flood?

MR FLOOD: Yes, thank you, commissioner. Despite my mirth at your very first question to Mr Baker, I do think we are reasonably close to reaching agreement on this.

10 I actually wrote one of a number of letters to Mr Baker, but the most recent one was of 27 March of last year and pointed out a number of apparent errors. They were more along the lines of drafting errors rather than content errors, so I pointed those out to Mr Baker. There was a delay which I don't need to go into, but Mr Baker last contacted
15 me on 19 October and I raised that letter that I wrote to him on 27 March last year and asked whether those matters had been addressed. They hadn't at that stage, commissioner, and Mr Baker was to respond to me by 2 December of this year.

20 You have heard from Mr Baker that he's e-mailed me and he is right, I have not received any e-mails from him so it's still in the air somewhere so this morning is the first time that I've actually viewed exhibit AMWU.1 and there are – like you, commissioner, I haven't looked right through the document but a very quick look I noticed that
25 on page 9 of the exhibit you raised the question about whether there should be a letter C before Level 10. That was actually one of the matters that I put to Mr Baker in our letter of 27 March. So that matter hasn't been addressed and I'm not sure whether any others have as well.

30 Also quickly, commissioner, I've noticed that there are some other issues that I haven't raised in that letter of 27 March. For example, the supported wage increase – the minimum rate there is \$45 and of course that has now increased – I think it is \$53 from memory. So it's those sorts of things I think will need to be updated. I think 45 was correct when this draft was first done, but those sort of things will
35 need to be updated.

40 So, commissioner, I think what I'm saying to you is that whilst I am prepared to say that we consent generally to the exhibit AMWU.1, we would like some time to properly look through it and address particularly those two matters that I've raised, but also any others that we find.

COMMISSIONER: Yes. I indicate now I will grant that adjournment. How long do you think you will need, Mr Flood?

MR FLOOD: Commissioner, this has been dragging on for ages and ages. I'd like to think that I can do what I need to do by the end of next week so I'll have a response to Mr Baker by Friday of next week.

5 COMMISSIONER: Which is – it's the eleventh really, isn't it. Do you want to do it – we'll just go off the record for a minute thanks.

OFF RECORD 11.02am

ON RECORD 11.05am

10 COMMISSIONER: Yes, thanks, Mr Flood. This matter will resume at, shall we say, 9:30 on Friday, 21 December and hopefully the minor amendments that appears that are remaining need to be made have been settled between the parties by then and we're able to confirm the completion of the review of this award on that day and then it will be issued in full early in the new year hopefully.

Is that your understanding, Mr Baker?

15 MR BAKER: Yes, sir.

COMMISSIONER: Mr Flood?

MR FLOOD: Thank you, commissioner.

COMMISSIONER: Thank you, this matter is adjourned.

HEARING ADJOURNED 11.06am