

DEPUTY PRESIDENT JOHNSON: I'll take the appearances please for the TWU.

MR J.W. GILL: If the commission pleases, my name is GILL, JACK WILLIAM, and I appear on behalf of the Transport Workers' Union of Australia, Tasmanian Branch.

5 DEPUTY PRESIDENT JOHNSON: Thank you, Mr Gill. I think we've met on the phone. That's the first time we have met.

MR G. COOPER: If the commission pleases, I appear on behalf of the Australian Workers' Union, Tasmanian Branch, COOPER, G.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Cooper. The respondent employers.

10 **MR M. WATSON:** May it please the commission, MARK WATSON. I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Watson. Mr Gill.

15 MR GILL: Commissioner, before I begin, I'd like to seek leave to amend the draft orders on both these awards. There has been some mistakes identified - not in the calculation but in the draft order itself, in the original figure. I'll go through them one at a time, starting with the Carriers Award. The last page, which is page 9 of the draft order, in the last two dot points, by deleting - Clause 33 - Payment of Wages, subclause (d) the amount of \$8.25. That \$8.25 should be \$8.10 and the last one at clause 33, subclause (f), the amount of \$10.60 should be \$10.40.

20 In the Transport Workers General Award, there's a few more than that but not that many, I hope. Beginning on page 5 of the draft order, the fifth dot point up from the bottom, by deleting from subclause (h) the amount \$8.70 - should read \$8.85. The second-last dot point on the same page, by deleting from subclause (k) the amount of \$1.05 - should read \$1.06 and the last dot point, (l) by deleting the amount \$1.22 - should read \$1.20.

25 And on the last page, which is page 6 of the draft order, the second dot point from the top, by deleting from subclause (m) the amount of \$1.68 to read \$1.70 and the one below that, by deleting from subclause (o) the amount of \$1.47 should read \$1.48 and to my knowledge that's the only corrections in those draft orders, but I'd stand corrected in that. I don't know how it happened but it did.

30 DEPUTY PRESIDENT JOHNSON: Mr Gill, there are - just to deal with the Transport Workers General Award, two other matters that my associate Mrs Gillie has noted, which haven't received your attention. Mr Watson, did you have an opportunity to check this order and if I suggest that Mrs Gillie thinks there are a couple of other areas that need correction, are you in a position to confirm them or not?

35 MR WATSON: Which one are we talking about, Mr Deputy President?

DEPUTY PRESIDENT JOHNSON: We're talking about Transport Workers General Award at the moment.

MR GILL: I'm sorry for interrupting. Do you mean clause 31, as opposed to clause 32. We've got the wrong clause numbering.

40 DEPUTY PRESIDENT JOHNSON: And the amounts as well, Mr Gill.

MR GILL: Right. I didn't change that on my copy. I do remember now, so there are other mistakes.

DEPUTY PRESIDENT JOHNSON: What I will do, Mr Watson, if you'd like to take notes of these - if you're not in a position to confirm them, I will tell you what we think from Mrs Gillie's efforts and if we get to the stage of approving this order I will do subject to corrections in terms of the rates upon confirmation of the parties.

5 In terms of the Transport Workers General Award, the second dot point on page - the
second-last dot point on page 6 of the draft order refers to clause 31 and that should
be clause 32. The amount shown in the - the first amount shown in that sentence is
shown as \$7.10. We think it ought to be \$6.95. The last dot point, also wrongly refers
10 should be clause 31 and it should be clause 32. The first amount shown, \$9.60, we think
should be \$9.20.

In respect of the Carriers Award, there are a fairly substantial list of very minor
changes which reflect rounding, perhaps. I don't know that I should take you through
all of them at this stage, but rather simply indicate that if we get that far that I will
approve this order conditionally on the figures being settled between the parties with
15 the assistance of my associate, Mrs Gillie. Do you have any objection to that
approach, Mr Watson?

MR WATSON: No, Mr Deputy President. As far as I understood it, the orders have
been agreed. However, it would seem that most of the changes that you're talking
about are actually the previous figures rather than the ones to go into the award. I
20 agree, it should be tidied up and done properly.

DEPUTY PRESIDENT JOHNSON: Yes.

MR WATSON: So, yes, I'm quite happy with that.

DEPUTY PRESIDENT JOHNSON: Yes. I'll just put you on notice of those matters, Mr
Gill, in respect of the Carriers Award and Mrs Gillie will be in touch with you in due
25 course to clarify the actual amounts.

MR GILL: Thank you, Deputy President.

DEPUTY PRESIDENT JOHNSON: Subject to those conditions, I'm prepared to order
that the application be amended in the form that you suggested.

MR GILL: Thank you. As an overview to the whole procedure, I'll start out by saying
30 that some weeks ago I contacted the Tasmanian Chamber of Confederation of
Industries - Jenny Thomas, the person I dealt with last year on the award variations -
I naturally assumed that I'd deal with the same person again, which I did - arranged a
meeting and I went in and saw her and took my first two draft orders in for checking.
We went over the figures. We agreed on the amounts, the rounding off and the
35 increases. I went back at a subsequent time on a second visit with a couple of
corrections where I'd made some typing mistakes and told the TCCI that I intended to
lodge the application to have the award varied and they agreed with me that it should
be done.

Subsequent to that I received a letter - sorry, I jumped a bit. I then lodged the
40 application with the draft orders with it and then I received a letter from Mr Cameron
from TCCI in Launceston informing me that although he didn't oppose the award
variation, that in fact clause 31 was numbered wrong and it should be clause 32 and
all the rest of the figures were correct. I didn't think any more about it. I thought I'd
seek to amend the draft order.

45 DEPUTY PRESIDENT JOHNSON: I'm not being critical of you, Mr Gill. We can get
over that problem.

MR GILL: In the same letter, Mr Cameron pointed out that in fact the award wasn't due for the - the 12 month period hadn't lapsed since the last safety net increase until 24 November and I agree with that because that was the date of the last increase and the wage fixing principles say that there's to be a 12 month gap between the two.

5 The reason I've lodged these early, rather than later, is that in my experience in doing applications to vary awards, unions have always been criticised in getting the applications in late so it would be nice for a change to get it in early and when the 24 November comes around, then all the employers would know that there was a wage increase due and would be able to budget accordingly. There'd be a bit of forward
10 planning, as opposed to making back-payments some months after the event and having a series of complaints that comes with back-payments as it interferes with the cash flow of business. I thought that would be a good idea and I'm hoping that the TCCI and the industrial commission will support it.

The increase for the third \$8.00 safety net, it doesn't offend the public interest and it does fit within the wage fixing principles and all the guidelines subsequent to that. So,
15 I can't see any real reason why it can't be approved, subject to operative date of the 12 month's gap between the second \$8.00 safety net increase and the third \$8.00 safety net increase and I would ask the industrial commission that they approve these, subject to checking the figures and rounding off - the appropriate rounding off of
20 figures to go in there. I'm aware that rounding off is a little bit difficult to achieve in some of these awards because of the differences in rounding off and I'll converse with Mrs Gillie, your associate, on that and I ask that the commission approve these two awards to be varied for the third \$8.00 safety net. Thank you.

DEPUTY PRESIDENT JOHNSON: Mr Gill, I have on the record a blanket letter from
25 the Branch Secretary of the Transport Workers' Union, which commits that organisation to a review of the awards outlined in principle 7.3.2.3 of the industrial commission's wage fixing principles, as amended in the recent full bench decision of 24 July this year in T5214. Among the awards mentioned in that blanket approval are the Carriers Award and the Transport Workers General Award.

30 For the purposes of the record, I would indicate that the first safety net adjustment was operative from the first full pay period to commence on or after 31 January 1994 in the Carriers Award. As Mr Gill has stated, the second adjustment operated from the first full pay period to commence on or after 24 November 1995. I note, for purposes of the record, that the minimum rates adjustment is complete and perhaps Mr Gill, so
35 far as you can tell me, are there any previous increases in award rates since November 1991 that are required to be offset against the third safety net adjustment?

MR GILL: No, Mr Commissioner. To my knowledge, there hasn't been any.

DEPUTY PRESIDENT JOHNSON: In the case of the Transport Workers General Award, the first and second adjustment dates are identical with those of the Carriers
40 Award. The position with the minimum rates adjustment is the same and, presumably, it is also the same in respect of the necessity to offset any increases since 1 November 1991.

Subject to the approval and correction of the figures, the application that you make is in the form of the draft order and that while you seek to have the award varied as a
45 result of these proceedings today, the operative date that you seek for application in both awards of the third \$8.00 safety net adjustment is from the first full pay period commencing on or after 24 November 1996. Is that the case?

MR GILL: Yes, that's correct.

DEPUTY PRESIDENT JOHNSON: Yes. Thank you, Mr Gill. Mr Cooper.

MR COOPER: Mr Deputy President, with respect to the application, we confirm the dates - that's what our research has indicated, that the award would not be available - not be able to be varied to the third arbitrated safety net under principle 3.2.2 until 24 November 1996 and that would be the period after 12 months has elapsed. In respect
5 to that, we support the submissions of Mr Gill in the Carriers Award, which is the award we are appearing in.

We advise the commission that consistent with 7.3.2.3 and the wage fixing principles, that came out of decision 6284 of 1996, that the AWU commits to the wage fixing principles as prescribed in that decision and as required by the commission to allow
10 for the third arbitrated safety net adjustment to flow through. In all other respects, we support the submission of the Transport Workers' Union. If the commission pleases.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Cooper. Mr Watson?

MR WATSON: Thank you, Mr Deputy President. Based on the suggestion earlier, that the parties, together with Mrs Gillie, need to go through the orders and make
15 some corrections, we would advise that the orders are in order, as far as we're concerned.

In terms of the two applications, I guess as far as Mr Gill's submissions are concerned, about getting the applications in early, that certainly does have some merit and I guess in that sense, employers would be able to pay the \$8.00 safety net
20 increase as it's due, rather than perhaps having some retrospective effect.

However, I guess I have just got one question for you, Mr Deputy President - under principle 7.3.2.2, how does that sit, as far as you're concerned, in being able to approve this application today?

DEPUTY PRESIDENT JOHNSON: And specifically are you dealing with 7.2.2. or are you including all of the tests that go with it?
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MR WATSON: Well, all of the tests would be 7.3.2.1 - the award has been varied to reflect the first and second. Well that's okay - there's no problem with that; 7.3.2.3 - commitments have been received from all relevant unions in relation to the award review process, so in terms of those two provisions there wouldn't be a problem.
30 However, 12 months has not elapsed. Now I just - I just want to get clarification as to whether or not it is possible to actually approve the application today based on the fact that 12 months has not elapsed.

DEPUTY PRESIDENT JOHNSON: Well 7.2.2 doesn't talk about approval does it?

MR WATSON: 7.3.2.2?

DEPUTY PRESIDENT JOHNSON: 7.2.2 doesn't talk about approval - oh, I beg your
35 pardon.

MR WATSON: 7.3.2.2, Mr Deputy President.

DEPUTY PRESIDENT JOHNSON: Yes. It makes no difference really to what I'm about to say; 7.3.2 says 'on application the third \$8 per week arbitrated Safety Net Adjustment will be available'. That doesn't mean to say that the tribunal can't approve
40 it; the availability of the increase doesn't occur until, in this case, the first full pay period to occur - that arises on or after the 24th November.

MR WATSON: Yes. Okay, well on that basis, Mr Deputy President, we would advise of a consent to the application. However, what I would have to do is reserve our right
45 to come back to the commission between now and the first full pay period on or after

the 24th November on the basis, I suppose, anything that may happen which may change the circumstances that we're in at the moment. So I guess as we speak, the application and all the tests would be fine. However, if circumstances do change - and I've got no idea what they may be - but it would certainly be on the basis that we would reserve our right to change our position if circumstances in relation to these particular two awards do change, for example, if we attempted to commence the award review process and didn't cooperation.

Now I'm not suggesting that would happen, however, that could be one of these circumstances that we may change our position. So I'm prepared to advise of consent to it today from the first full pay period on or after the 24th November providing we have our reserves - rights reserved in relation to if circumstances do change between now and that date.

DEPUTY PRESIDENT JOHNSON: I get a strong feeling, Mr Watson, that you're inventing straw men in order to knock them down.

MR WATSON: No, no certainly not, Mr Deputy President, I am quite happy to go along with the situation as it has been put today. I've got no problem with that. However, the thing that does concern me is the Principle 7.3.2.2 about the fact that we're actually agreeing to this application prior to the 12 months having elapsed.

Now to my knowledge I think this would be the first one that's actually come before the commission in this form - would that be right?

DEPUTY PRESIDENT JOHNSON: I don't know.

MR WATSON: I think - well as far as I can see, I think that would be the case. So I'm prepared to cooperate with the process to alleviate another hearing and everybody having to reconvene, however obviously our position would be - would be - if circumstances are exactly the same as they are today and nothing changes, well then there's no issue at all.

DEPUTY PRESIDENT JOHNSON: I really feel that there's no issue now. Clearly the commitments have been given; the implications of your submission are that for some reasons of bad motive those commitments might be withdrawn.

MR WATSON: No, certainly not. I'm not suggesting that at all, Mr Deputy President. All I'm saying is that if circumstances that we're in at the moment are exactly the same on the 24th November, well then obviously there's not a problem. But I'm simply reserving our rights to make - to change our position or make submissions in relation to this matter prior to the 24th November if circumstances do change. Now I don't know what they may be but that's simply the position that I've got.

DEPUTY PRESIDENT JOHNSON: All right, Mr Watson. Mr Gill, do you want to make any observations about what Mr Watson has said please?

MR GILL: Mr Deputy President, yes I'm really just about stuck for words; I really can't understand the logic of the argument given that it's not a great period of time between now and the 24th November, it's not like it's a six month or more time period where a lot could happen. We haven't any intention whatsoever of frustrating any review of the award process or any other process that may come along between now and then. In fact - if the sky fell in prior to the 24th November then it really wouldn't matter what we said here today and that's about the only thing that would change between now and then.

All I can say is that I'm - they are - the TCCI, that is - are grasping at straws and being - really don't trust people for no - and I can't think of no other reason why they'd want

to get up and oppose it. I had talks with the TCCI prior to this hearing today. I've met with them on two occasions - this wasn't raised on those two occasions. We had agreement - we all trusted each other that we were going to do the right thing. The Transport Workers Union certainly doesn't intend to try to pull the wool over anyone's eyes. We're not - well we're not about that. We're about representing our members in the fairest way possible and next time - or if I ever hear the TCCI criticise another union again about their lateness of applications - it's their fault they didn't get the award increase time because the application didn't go in, then I'll remind them that if you try and put it in early then you get the same argument.

10 So what really do they want? And I guess the bottom line is that they really don't want to see people get a fair and just wage system - that they want to frustrate it all they can and this is only a reflection on that. I thank you.

DEPUTY PRESIDENT JOHNSON: Thank you, Mr Gill. Mr Cooper.

15 MR COOPER: Mr Deputy President, in respect to the submissions made by the TCCI, they do have rights under the act and those rights are subject to appeal. I believe thought that the submissions they made are somewhat groundless in that the principles for this application in every respect meets with the principles in that we're not asking in terms of the Carriers Award, in any event and we're not asking for an operative date that precedes the 12 months. We have projected that date to be the 20 24th which is consistent with 7.3.2.2 and in any event the rest of the application conforms with the Wage Fixing Principles and certainly the public interest test in that the unions are seeking to, as Mr Gill has said, seek to have an application in and that provides for a prospective date which will allow for an orderly transition from for an \$8 wage increase. In that respect I think the concerns of the TCCI are somewhat 25 groundless and we do not support them.

We think there's no bar preventing the commission from granting this application provided that the commission accedes to the request of the unions for an operative of the 24th November. And if you granted an earlier date from that, obviously then there would be grounds for the TCCI to raise some complaints. But there is none and in any 30 event the commitments that are necessary have been given and the argument, I suppose, would hold, if what happened after you granted the \$8 in December we decided we didn't want to meet, would they able to come back and take it off us. I mean it really is a groundless argument. The facts are the commitments have been given. They've been given in good faith by all parties and it's not our intention to 35 frustrate or delay the award review process. I confirm that for the record for the commission and we see that there is no barrier subject to the draft orders being checked for accuracy. There's no barrier to the commission granting the application in the manner sought. If the commission pleases.

MR WATSON: Mr Deputy President -

40 DEPUTY PRESIDENT JOHNSON: Mr Watson.

MR WATSON: - if I could just make a comment just before you conclude. I think this is perhaps being blown out of proportion a little bit. Our position in discussions prior to the hearing has changed a little bit since the hearing commenced. Now what I'm saying is that we will agree to the application as it's presented to you today, 45 however because it's within the 12 month period, all I'm doing is reserving my rights, whatever that means - it may mean nothing - it may not even give us any rights at all - however, all I'm saying is that if circumstances change well then we would reserve our rights. Now I don't think that's an unreasonable position and I think the comments made are perhaps a little bit over the top by both unions. I'm prepared to cooperate 50 with this process and I think the fact that the application has gone in early is - is

something that we certainly don't criticise at all and I just think it's perhaps being blown out of proportion somewhat. If it please the commission.

5 DEPUTY PRESIDENT JOHNSON: Thank you, Mr Watson. I don't propose to let you off too lightly. I've been a tribunal member for 20 years now and before that for some 12 years or so an employer advocate and in the whole of those 30-odd years it's been a consistent continuing complaint of employers that unions for one reason or another are tardy, inefficient or simply don't get their act together and get applications in in a timely manner, and hence there are always arguments, as Mr Gill says, about some degree or another of retrospectivity, and you yourself presented a submission in the
10 earlier matter this morning on just that point.

I make no further comments about it. I will record this caution and the points you raise in relation to 7.3.2.2 in the decision that I write in connection with this - these matters. That aside, I'm satisfied that the requirements of the Wage Fixing Principles are satisfied in connection with both these applications. There is no reason in the
15 public interest notwithstanding the discussion that has ensued about the applicability of 7.3.2.2 and its interpretation. In that respect I agree with the submissions of Mr Cooper that all of the requirements have been satisfied and in particular I make the point that 'available' relates to the date upon which the award prescribes the availability to the employees of the particular increase. It is not in my view a question
20 of approval or the date of approval by this commission.

I note the employer's position that it reserves the right to bring the matter back to the commission if between now and the 24th November for reasons that are not specified, there is some change in circumstances that requires this commission on some alleged complaint to reconsider the matter. That aside, I propose to vary the awards in a
25 manner sought subject to the checking of the details of the amounts and the orders by Mrs Gillie in consultation with the parties. The commission's order in both cases will take effect from the first full pay period to commence on or after the 24th November, 1996.

30 That concludes the hearing of matters C.6 - oh, I beg your pardon - I've slipped into another jurisdiction - 'T' No.6473 and T.6474 of 1996.

HEARING CONCLUDED