

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T Nos 5574 and 5576 of 1995

IN THE MATTER OF applications by the
Automotive, Food, Metals, Engineering,
Printing & Kindred Industries Union to vary
the Shipbuilders Award

re restructuring of award and insertion of
second minimum rates adjustment

PRESIDENT

HOBART, 14 November 1995
continued from 3/11/95

TRANSCRIPT OF PROCEEDINGS

Unedited

PRESIDENT: Where are we with this matter? Mr Baker.

MR BAKER: Thank you, sir. I will tender a formal apology for my non-appearance last week, however, I understand the matter was dealt with by my colleagues and that matter has been concluded - or that part of the restructuring has been concluded.

5 PRESIDENT: Yes.

MR BAKER: The second matter was to deal with the restructuring as far as the clerical officers were concerned. I understand that there has been some discussions occurring between the TCCI and the ASU which has resulted in a radical - if I may use that word - restructuring of the award.

10 MR EDWARDS: Bit of lateral thinking.

MR BAKER: We are proposing actually to delete from the Shipbuilders Award the clerical division in its entirety and they will then be covered by the general provisions of the Clerical and Administrative Officers Award.

MRS DOWD: Employees (Private Sector) award.

15 MR BAKER: My colleague, Mrs Dowd, has a draft order to give effect to the - to that proposal. We believe that that will be the cleanest and easiest way as far as this award is concerned. There are very few clerical employees actually engaged under this particular award and it's felt that by the application of the state clerical award it will be far more effective than - than what we currently have in the Shipbuilders Award
20 and it will make it far easier of course to restructure the Shipbuilding Award with a single division rather than the two that currently are there. So I may defer to Mrs Dowd I think who perhaps will take you through the -

PRESIDENT: Yes, just a preliminary question on that; will this then become part of your application?

25 MR BAKER: Well it always was. It was always intended -

PRESIDENT: Yes.

MR BAKER: - that the restructuring would encompass the clerical and the trades but not trade classifications.

PRESIDENT: Yes.

30 MR BAKER: I never actually defined what was meant by restructuring of the award.

PRESIDENT: It was a very general application.

MR BAKER: Yes, yes.

PRESIDENT: And as it's your application I'm not certain about the technicalities - I might hear from Mr Edwards later on just to -

35 MR BAKER: Well -

MR EDWARDS: I'm not given to technicalities or legal form, president

MR BAKER: I mean it would be our -

PRESIDENT: That's nice to know.

MR BAKER: - it would be our submission that we would be able to proceed with the matter today -

PRESIDENT: Yes, well I think - I would like to do that.

5 MR BAKER: - given the scope of the application. If not, well Mrs Dowd will have to lodge an application.

MRS DOWD: It's already lodged.

10 PRESIDENT: And if you cared to - if we were in any sort of difficulty and Mr Edwards saw some problems with it, then there are ways we can get around it to deal with it today, I'm certain. But I just wanted to put it on the record so that there's no confusion later on as to how we should be proceeding.

Mr Edwards, do you have a comment about the matter of procedure?

MR EDWARDS: I've always got a comment - whether it's helpful or not remains to be seen.

As I understand it, president, the matters called today were 5574 and 5576.

15 PRESIDENT: That's correct.

MR EDWARDS: Double five seven four seeks to restructure the award consistent with the wage fixing principles of the commission.

PRESIDENT: Yes.

20 MR EDWARDS: It - on the basis of that it would be my submission that the applications that are before you today are broad enough to encompass the nature of what we've agreed with the ASU and which can therefore I think be processed.

PRESIDENT: Yes, well that would be the line that I would prefer to take.

MR EDWARDS: I never like having to come back unnecessarily, president.

25 PRESIDENT: Yes, very good. Thanks for that, Mr Edwards, that will facilitate the process. Mrs Dowd?

MRS DOWD: Thank you, Mr President, just for that situation I did actually lodge this morning an application to vary the award in relation to the draft order that I've actually got to present to you but I will withdraw that application now that you've consented that the variation can be covered under Mr Baker's application.

30 I'd like to actually hand to the commission a draft order in relation to the deletion of the clerical classifications.

PRESIDENT: Very good. We'll mark this D.1.

35 MRS DOWD: This draft order, Mr President, actually sets out the deletion of all clerical classifications and mention of clerical personnel in the award. The first one is deletion from clause 3 - The arrangement for Division B - Clerks. Also so from clause 3 - Arrangement, the conditions for employees in Division B.

From clause 7 - Definitions; there are two definitions in there relating to clerical employees and one is trainee clerk; the other is training agreement. Then from -

PRESIDENT: Is it - that was confined to -

MRS DOWD: To clerical employees.

PRESIDENT: Clerical employees, was it?

MRS DOWD: Yes, they were.

5 PRESIDENT: Okay, good.

MRS DOWD: The next variation is from clause 8 - Wage Rates - the deletion of Division B - the whole of Division B. And the next amendment is for the deletion of all of the conditions from employees in Division B and I have actually listed all the clause numbers and the names of the clauses that relate to Division B. And the last deletion, Mr President, is from clause 6 - Parties and persons bound, to delete the Australian Municipal, Clerical and Services Union and rename (c)(ii) and (iii) as (c)(i) and (ii) respectively.

PRESIDENT: Very good.

MRS DOWD: If the commission pleases.

15 PRESIDENT: Well that very quickly deals with a fairly radical proposition, Mrs Dowd. Mr Edwards?

MR EDWARDS: Thank you, president. Mr President, firstly I'd confirm the agreement of the TCCI to the nature of the application that's before you which is the deletion of clerical classifications from the Shipbuilders Award. I've only been handed this draft order upon arrival at the commission today, which I don't apportion any criticism in saying that, it's just simply a statement of fact and I would obviously like the opportunity just to quickly peruse it when I get back to my office to make sure there is no problems with it. There doesn't appear to be - it looks pretty straightforward. Stranger things have happened.

25 PRESIDENT: But you agree with the principle?

MR EDWARDS: Certainly agree with the principle.

PRESIDENT: Right.

MR EDWARDS: In saying that, I hastily add that this shouldn't be interpreted by anyone as a weakening of the resolve of my organisation. - Mrs Dowd obviously is aware of - but we believe industry awards which are what are most awards of the - in the private sector in this commission ought to be self-contained - they ought to contain all classifications necessary to embrace the width of the industry covered by their terms and that we should not be having to resort to occupationally based awards which in the context of our tribunal we believe are anathema, and that's a view we will hold probably for quite some time to come.

PRESIDENT: Could I - having said that, can I ask you why on this occasion it was considered appropriate?

MR EDWARDS: Because we had instructions from our members that they were prepared to accept on this occasion that that proposition could go forward.

40 PRESIDENT: Right - all right.

MR EDWARDS: It's a situation where we had specifically consulted each and every one of our members covered by the terms of the award and sought and contained their consent to the variation that's been suggested. There are very, very few clerical employees covered by this award and I certainly don't think, given their number, that it's worth the reprint of almost every condition in the award in a separate section within the award. I think the deletion of the name of Mrs Dowd's union itself would probably save about three pages. The name of the union is extraordinarily long - nearly as long as Mr Baker's.

PRESIDENT: Well your organisation's name is getting longer as time goes on too, Mr Edwards.

MR EDWARDS: Not at all - we've even dropped the 'Inc.'. Mr President, with frivolity aside, the application as it's been presented by Mrs Dowd is consented to by the TCCI with operative effect from today's date - or the beginning of the first pay period to commence on or after today's date. We believe that is an appropriate way of dealing with the structural efficiency principle of this commission in accordance with Mr Baker's application, T.5774, and for those reasons we consent to it, obviously reserving our right to just make any comment we'd think necessary on the draft order within the next hour or two of leaving the commission's premises.

PRESIDENT: Very good. Very good - thanks for that, Mr Edwards. Well as to the general principle proposed here for the reasons I think Mr Edwards' members have seen fit to consent, I think it's an appropriate way to go with this particular industry and I do suspect they're very - very few full time clerical employees engaged in the industry and the general award, if I can call it that, can pick up those few people quite adequately.

Well thank you very much, that's very - that's a really good start towards the restructuring, Mr Baker, what have we got in line now for part three?

MR BAKER: For part three, as I was saying to Mr Edwards earlier on, all we've got to do now is sit down and give it a good read -

PRESIDENT: Hasn't that been done yet?

MR BAKER: - and we need just to give that once over and make sure that when these conditions were last reviewed back in the early nineties - or '89, '90 - whatever it was - they in fact - we have in fact made sure that it's up to date. The other thing which we need to do is - for my benefit - is to have a look at the issue of why we have two tool allowance provisions covering nominally the same employees and to have a look at the special allowances and see whether or not they're still - still in fact current and have a look at the - the rate of remuneration which is applicable in those circumstances. But principally, as I earlier indicated - much to Mr Edwards' derision - we need to have a look at the - we need to give it the - a good once over.

PRESIDENT: Can't - I can't believe that. Yes, well it does need a - it does need a good look at - that's for sure.

MR BAKER: I should add, I - Mr Commissioner - Mr President, that I don't see that there should be any real problems in - if it is found necessary that we need to rewrite any of the provisions of the award that there should be any difficulties between Mr Edwards and myself for achieving that end. I mean I really consider that more of a drafting task than a negotiation exercise.

PRESIDENT: Yes. Yes. Before - before -

MR EDWARDS: I can't leave that alone.

MR BAKER: You can't help yourself can you.

PRESIDENT: Before Mr Edwards -

MR EDWARDS: Certainly not.

5 PRESIDENT: - before Mr Edwards breaks the chain there, could I just ask you whether or not you would agree that when we look at the order coming out of today's proceedings which takes out references to clerical employees, that we also take out references to employees in Division A - the consequential amendments and -

MR BAKER: Oh yes, yes.

MRS DOWD: Mm.

10 PRESIDENT: - and make it as though it were just the one award dealing with the one group of employees - could you -

MR BAKER: I'd have no difficulty with that.

PRESIDENT: Well we'll try and pick those sorts of things up as we go through the order.

15 MR BAKER: Yes. Mr Edwards may need some time to consider his position but I think we can agree to that.

MR EDWARDS: I'm ready to go.

20 PRESIDENT: Yes. All right, so - I mean that would mean then that, for example, at the lead into clause 8 would not have that preamble - Division A - employees engaged in construction, alteration, repairing, et cetera - it would just be wage rates - adult employees.

MR BAKER: Yes.

PRESIDENT: All right. Well Mr Edwards is raring to go again, Mr Baker.

25 MR EDWARDS: Yes, I get to have a second go. A couple of things, president, if I just might comment briefly. Mr Baker has raised this question of the tool allowance again and it was raised on the last day of hearing by yourself, sir, and I gave a brief explanation then of part of the history. I think the other part of the history that needs to be understood is that in previous days there were three divisions in this award, not
30 two. There was a separate division for dunnages, there was then a division for the shipwrights or shipbuilders section, if you like, for want of a broad term, and there was a third division for clerical employees.

The reason there are two different tool allowances is quite simply that Deputy President Robinson or Deputy Chairman Robinson - as he was at the time -
35 determined a specific rate for the dunnages which was different to the rate that would apply to a shipwright who is required to supply a full kit of tools, and frankly I see the logic in that given the evidence that was before the deputy chairman at the time of what was required to be supplied by a shipwright, which is significantly less than that supplied by - significantly more than that - required by a dunnager, which I think at
40 the time was said to be basically a chain saw and a hammer, from my recollection - although my memory is not always as good as it ought to be - but something along those lines.

That is in brief the history of that. I'm more than happy to share the contents of my files on that with Mr Baker and maybe able to help him through that.

5 Having said that, Mr Baker indicated that the structural efficiency exercise that we're about to embark upon should be one of drafting, not negotiation and it's really that that caused my chain to draw taut.

10 And I draw Mr Baker's attention, and that of the commission, to the lead into the State Wage Case set of principles wherein the commission indicated that all matters coming before the commission are required to stand the test of the structural efficiency principle and the various matters that fall within that principle. And I think there are issues within this award that can be tested against those series of tests, and it's the only opportunity, it seems at the moment, that are available to employers to try and make awards more relevant to the modern day needs of industry because clearly they are not in those instances. And this is the one opportunity we get to do that, and we intend to take it with both hands and do a comprehensive exercise. It may not result in any changes at all or it may result in a root and branch job on the award. Time will tell. As Mr Baker said, to do that I suppose we're going to have to do the unthinkable and actually read the award and see what it means.

PRESIDENT: Yes, all right. And what do you say to the need to consequentially amend the award as a result of the removal of clerical?

20 MR EDWARDS: Well it seems on the surface to make sense and I'd probably agree to it. I guess the only reticence I've got is the confusion that's now arisen over the previous deletion of what was Division A at the time, which was dunnages, which is now combined Division A and B - dunnaging and shipwrights.

PRESIDENT: Yes.

25 MR EDWARDS: I don't see that that confusion can be exacerbated on this occasion because there is only one set of conditions in the award, so there's probably no need to differentiate.

PRESIDENT: Yes.

30 MR EDWARDS: For that reason I'd probably support the suggested consequential amendments.

PRESIDENT: All right. We'll exchange drafts.

MR EDWARDS: Thank you, president.

35 PRESIDENT: That would be the best way to go. the keystones to the commission's activities, so I don't think there's any problem there that structural efficiency will be given the - any sort of short shrift in this process.

All right - is there anything more we need - oh, yes, we'd need to - I desperately need to get from you some time frame for part three of the exercise. Do you want to go off the record for a moment? All right, thank you.

OFF RECORD

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PRESIDENT: Thank you very much for that discussion. We will adjourn these proceedings then until December the 14th at 9.30 when we will consider wrapping up

the restructured award in terms of structural efficiency principle. Thank you very much for your attendance.

HEARING ADJOURNED