

**TASMANIAN INDUSTRIAL COMMISSION**  
Industrial Relations Act 1984

T No. 5296 of 1994

**IN THE MATTER OF** an application by the  
Australian Liquor, Hospitality and  
Miscellaneous Workers Union - Tasmanian  
Branch for the making of a new award

re the Wholesale Plant Bakeries Award

COMMISSIONER WATLING

HOBART, 29 March 1995  
continued from 2/3/95

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER WATLING: I'll take appearances please

**MR K. O'BRIEN:** If the commission pleases, I appear on behalf of the applicant organisation.

COMMISSIONER WATLING: Good, thanks, Mr O'Brien.

5 **MR T.J. EDWARDS:** If it please the commission, EDWARDS T.J. I appear for the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER WATLING: Good, thank you. Right well we've been together on a few occasions in relation to this matter.

10 MR O'BRIEN: Well firstly Mr Commissioner, I'd like to - as I wasn't here on the last occasion - indicate my apology for the inconvenience cause to the commission by our inability to arrange things a bit better than they were and indicate that today we do come to the commission with something of substance to progress this matter, indeed an agreed document, and the first thing that I would seek to do is to apply to vary application T.5246 of 1994 in the manner outlined in a document I now tender, which is headed 'In relation to application T.No 5246 of 1994'.

15 MR ....: It's 5296.

COMMISSIONER WATLING: Oh, we'll mark this -

MR O'BRIEN: Five two nine six - is it? I'm told there's an error in the document.

COMMISSIONER WATLING: Five two four six in the document.

20 MR O'BRIEN: Oh, I'd ask to correct that to nine six - 5296 of 1994.

COMMISSIONER WATLING: Alright.

MR O'BRIEN: I'll get there eventually.

COMMISSIONER WATLING: We'll mark this exhibit A.1. Right. This is an application to seek leave to amend the application. Any objections? Mr Edwards?

25 MR EDWARDS: No objection, commissioner.

COMMISSIONER WATLING: Right. Leave is granted, so we're dealing with an application now to - to make a new award called the Wholesale Plant Bakeries Award.

30 MR O'BRIEN: Yes. Mr Commissioner, in relation to that following discussion with the employers and the TCCI, there was agreement that the appropriate to the new award should be the Wholesale Plant Bakeries Award and that is the reason for that amendment to the application.

Secondly -

COMMISSIONER WATLING: And this exhibit, A.1, replaces all the attachment to your application?

35 MR O'BRIEN: No, it replaces the first seven clauses of the attachment - clauses 1 to 7 inclusive.

COMMISSIONER WATLING: Right. Oh yes, I've got it here in the document here.

MR O'BRIEN: I thought rather than reproduce a sheet of all of the rest it would be easier to -

COMMISSIONER WATLING: I just didn't have the time to read the document but I see that it's in there at a quick glance.

5 MR O'BRIEN: Mr Commissioner, in relation to - to the scope of the award we have elected - and this again is an agreed matter - to define the scope of the - to outline the scope of the award in the simple form contained in the new clause 2 - Scope, proposed in exhibit A.1 and that simply reads: This award is established in respect of the wholesale plant bakery industry as defined, and on the last page of the exhibit, you'll  
10 see a single sheet which has - and that is the last definition appearing in the definitions clause - clause 7 - which defines wholesale plant bake industry in terms as follows: Wholesale plant bakery industry for the purpose of this award shall mean the industry of the baking, preparation for sale and distribution of bread, bread rolls and other yeast raised products where such products are predominantly sold at premises  
15 other than those on which they are made.

And I can indicate that there is agreement that that definition, together with the scope clause, would define the scope of this award and would to the extent that the Bakers Award covers this work, set it apart in that in the production of the said products is for sale predominantly at premises other than the premises on which they are made.  
20 So for example, this award would not cover a hot bread shop, for example, that was baking goods predominantly for sale at that - at those premises. It would not cover a pie maker because a pie maker wouldn't be making bread, bread rolls or yeast raised products, whether they were to be made for sale on the premises or off the premises. So there are two criteria for coverage and/or exclusion from coverage of the award as it  
25 is proposed.

Now in relation to the coverage of the proposed award, at this stage this is as far as we would seek to extend it. We would, Mr Commissioner, indicate that we have specified to the employers that it would be our wish over time to look at other operations in the baking industry and see whether their coverage by the award that arises from these  
30 proceedings might be more appropriate.

COMMISSIONER WATLING: What does that mean?

MR O'BRIEN: Well it means that we - we are not saying that necessarily this clause will remain unaltered as the scope clause, but for now obviously this is what is agreed. Now I'm simply placing on the record that we have indicated to the employers that the  
35 award arising from these proceedings may become a vehicle for coverage of other sectors of the baking industry in the future.

COMMISSIONER WATLING: So are we sort of talking about sort of the main four or five -

MR O'BRIEN: Yes.

40 COMMISSIONER WATLING: - major bakeries only that were covered by this -

MR O'BRIEN: Essentially that's what -

COMMISSIONER WATLING: How many of them are there - five is it?

MR O'BRIEN: Four, I think. COMMISSIONER WATLING: There's -

MR O'BRIEN: Cripps, Nu Bake, Bass, Country Bake.

5 COMMISSIONER WATLING: Right. Now when making a new award, the parties would probably normally add another clause because once I make this award, this award will apply and it won't have any wage rates or conditions. So I take it that you want a clause to be inserted that says that until the making of this award has been finalised, that the Baking Trades Award applies in all respects.

MR O'BRIEN: The Bakers Award, yes. I think that would be a very appropriate course, Mr Commissioner.

COMMISSIONER WATLING: So should I include that in -

10 MR O'BRIEN: Yes, we spoke about that this morning and I didn't have an opportunity to put appropriate words in the draft. And I would be grateful if the commission could assist in that regard.

COMMISSIONER WATLING: Right. Now the reason for this making of this new award?

15 MR O'BRIEN: Mr Commissioner, the reasons are varied and there are a significant number of them. The creation of this award, I think, is purposeful in that it provides a vehicle for coverage of the major section of the baking industry in this state, a section of the industry which operates the largest plant and essentially supplies the overwhelming majority of the bread and bread type products for the population of this state.

20 The award as it stands, that is the Bakers Award, covers a very diverse range of types of operations and, you, Mr Commissioner, would be aware of the difficulty there has been on, I think, both sides of the industrial fence in dealing with the diverse needs and interests of the broad ranging industry that is covered by the Bakers Award. Operations which range from the large plant bakeries, as we describe the operations to be covered by this award, operations by major retail chains baking in their own retail premises, pie makers and cake makers who operate with a different set of hours, and the small bakeries or hot bread shops, however you wish to describe them, that supply a product which is aimed at an immediate use market rather than the sort of market that the major plant bakeries tend to aim at, and a range of mixtures of businesses in between.

25 The creation of the award as proposed, I believe, allows the industrial parties who will be covered by the award to focus upon the needs of the industry and to establish, I think, a modern industrial regulation implement for the industry for the future. It will be essentially a restructured award. It will contain -

35 COMMISSIONER WATLING: So can I take it that it's part of the restructuring program for the Bakers Award?

40 MR O'BRIEN: Yes. And it will, in our view, enable the industrial parties to accelerate the process of achieving the restructure. So from the point of view of the mechanism of achieving that, we think this award creates such a mechanism. And for the time being it is sufficient that it cover what is essentially the core of the industry so far as covering premises that, on their own, employ on a site by site basis more than any other site. And in terms of the output of product would be the highest volume producers of any of the producers in the state.

45 So, Mr Commissioner, we think for those reasons that we've adopted a course which will be in the interests of the industrial parties and will accelerate the processing of the award - the conditions and wages of employees in accordance with the principles laid down by the commission.

I'd have to say this, that it's our view that it is the achievement of that restructure is a precondition to making any substantial progress on enterprise bargaining. And so the process of bargaining also will be delayed whilst this process is to be completed. And so the earlier we can do this, the earlier that the enterprises can get on with meaningful negotiations with my organisation, which represents members at all of the premises to be covered by this award, with a view to seeing if anything further is to be done in an enterprise bargaining sense.

COMMISSIONER WATLING: Right. And is it your anticipation that it will establish relativities within levels within this new award and will that mean that you're going to be looking at any minimum rates adjustments, or will you just establish the appropriate relativities -

MR O'BRIEN: Well I can't speak with authority on what we might agree. We have our ideas and the employers, I'm sure, have theirs. It would be, I guess, a most acceptable outcome to us to simply create the award with rates. In relation to - and that's possible under the principles, as I understand it.

In relation to -

COMMISSIONER WATLING: And we can't have any jokes from Mr Edwards about they haven't got the dough to do this.

MR O'BRIEN: No, please.

MR EDWARDS: Don't take the rise out of me, sir.

MR O'BRIEN: I just refuse to comment, commissioner.

COMMISSIONER WATLING: Yes.

MR O'BRIEN: So having said that, we would ask that the award, as outlined, or at least the title and scope of the award, be made. I can indicate that we have scheduled a meeting for the 21st April and we would be hoping to make progress on that day or at least know where we stand at the conclusion of those negotiations and the likelihood that we can make a speedy request for a further listing of the application. If the commission pleases.

COMMISSIONER WATLING: Good. Mr Edwards?

MR EDWARDS: Thank you, commissioner. Commissioner, this is an application for the making of new award pursuant to section 33(1)(a) of the Industrial Relations Act. And as Mr O'Brien has outlined, it is one that comes before the commission on a consent basis.

There have been fairly extensive discussions between the parties about the two narrow issues that we bring to the commission today, they being the question of the title and scope of the award. And obviously accompanied with that is the definition of the form of words that is used in the scope clause.

I just note that the title talks about Plant Bakeries Award and then we use the term 'Plant Bakery' in the singular. I don't know whether that causes a confusion or not. It may pay, I suspect, to standardise the form of expression between the two.

COMMISSIONER WATLING: Well what do you suggest?

MR EDWARDS: Plant Bakery, as it would only define the business of any one employer at any one time. I'd suggest the singular would be the appropriate form of

words. I've only just noticed this while Mr O'Brien was on his feet. It's not intended to embarrass anyone.

COMMISSIONER WATLING: What do you think about that, Mr O'Brien?

5 MR O'BRIEN: I think there is no harm in what Mr Edwards suggests. On the other hand I don't think that there'd be a problem with the words as they are proposed. I'm happy if the commission feels there's merit in what Mr Edwards suggests to agree to amend.

COMMISSIONER WATLING: We might just go off the record for a moment.

#### OFF THE RECORD

10 MR EDWARDS: Thanks for that short break, commissioner. I think in retrospect the form of words in exhibit A.1 are the correct form of words, and that is the plural in the title and the singular in the scope and the definition. I think that would be on all fours with the act and the way in which awards should generally be made.

15 Going to the reasons behind the application, commissioner, Mr O'Brien has outlined those in a reasonably fulsome way. And from the point of view of employers in the industry, we would make the observation that the current Bakers Award, because of its diversity of coverage, has bedevilled the parties in the restructuring process to such an extent that we have been hamstrung from making any significant progress over the last 4 or 5 years, because of the diverse range of businesses that are catered for by the award. And as Mr O'Brien has outlined, they range from a large plant bakery who bakes one day for delivery the next, to bakeries operated within the major supermarket chains in the state, to pie makers, to cake makers, to small hot bread shops who bake product for immediate use, to mixed enterprises that make pastries and cakes and some bread and rolls et cetera. And it really has been extremely difficult to have a common set of wages and conditions applying to that broad range of industries whose needs are so different, both as to the hours in which they are required to operate and the conditions which attach to working during those hours. And the parties really have had a lot of trouble coming to grips with that and, to some extent, still are.

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30 However I believe, and the industry believes that the divorcing of one segment of the industry into its own award, which this application achieves, if it's granted will make that process just one step more simple than it is currently. There will still be difficulties in the Bakers Award and Mr O'Brien has foreshadowed that there may be occasion down the track where we may come back to try and extend or change the coverage of this award and use it as a vehicle for others. And so far as there is commonality between people covered by this award and those we might seek to take out of the Bakers Award later, that would probably be accepted by the industry. But we need to just examine the various segments of the industry and decide what the appropriate method of industrial regulation ought to be for that segment. And that's a process we will continue to work through as the parties to the Bakers Award.

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45 In respect of the current award, there are certainly a number of major catalysts that bring forward this application at this time. The first is the restructuring program that both the commission and Mr O'Brien have referred to. The second is the advent of enterprise bargaining processes that the companies in this industry really do need to get on with to make themselves efficient and competitive. And most particularly now, whereas from this weekend -

COMMISSIONER WATLING: Are you really saying that this award will establish the equitable basis for that enterprise bargaining?

MR EDWARDS: That is the intent of all the parties, commissioner, yes. And it's most particularly true at the moment of the need to get on to that enterprise bargaining processes because of the advent of all day Saturday trade from this weekend, which employers covered by this award will be required to service by way of bulk product to the supermarket chains. And certainly under the award as it's currently structured in the Bakers Award, that will be a process that will be required to be completed at something either double time or treble time. So if people in the community wish to pay about \$3 for a loaf of bread, what we've got now will be acceptable. However we suggest that's not the case. There has got to be a better way of doing it and the parties need to jointly sit down and determine what that better way is.

But that is an urgency that comes into the process, that Saturday trade is now here, and we really do need to get down round the table and find a way to enable these employers to service that trade. Because there is a requirement for supermarkets now to receive fresh product on 6 days of the week, as opposed to the previous 5 days. And therefore the regime of hours currently in the award will no longer be sufficient to achieve that situation, not in ordinary time sense anyway. It would require overtime arrangements and sixth and seventh day of work arrangements, which I think, as the commission as currently constituted, would be more aware than anyone else, is a very expensive process in the context of this award ranging right up to quadruple time for work on the seventh day of work in a week, which is an extraordinary circumstance in industrial relations terms.

Having said all of that, commissioner, we would support wholeheartedly the application before the commission to create the Wholesale Plant Bakeries Award as to title and scope. We would add our support to the request by Mr O'Brien that the commission add its now standard disclaimer, if you like, that the award doesn't have application until finally made, and that the Bakers Award would continue to apply during the transitory stage.

Commissioner, before the alarm went off on the transcribing equipment, I was about to observe that Mr O'Brien's document does have a date of operation's clause within it, which suggests that the new award have operative effect from the 1st April 1995. We would be prepared to lend our support to that date as well, for a variety of reasons which were outlined off the record. If it please the commission.

COMMISSIONER WATLING: Thank you very much. Any further submissions?

MR O'BRIEN: No, Mr Commissioner.

COMMISSIONER WATLING: Just in passing, will it require at the end of the day an amendment to the Baking Trades Award to exclude these particular people?

MR O'BRIEN: It probably will, Mr Commissioner.

MR EDWARDS: I, likewise, believe that that would be the best course to make it absolutely clear where people fit so that there will be no doubt occasioned down the track.

COMMISSIONER WATLING: So it's a matter we could address later, but at some stage of the game we might have to be finalising this award and varying the other award.

MR O'BRIEN: Yes, Mr Commissioner.

COMMISSIONER WATLING: Right. Well I can indicate to the parties that I'm going to endorse the application. I think there is a need for the establishment of this new award. In fact, it could be argued that it's long overdue because the question of a

5 diverse interest in this industry has been well known to me for quite some time. And I remember as a person that had to try and deal with some of these complex issues in the Industrial Board system, it was quite a nightmare. I think this is the way to go, make an award that is industry specific for whole plant bakeries, and I'm going to hand down a written decision in due course which will be in favour of the application.

I just indicate to the parties that there will be a need for the organisations that believe they have an interest in the award to apply to have their certificate of registration amended in such a way as to give them an interest in this award.

10 Whilst there is an appeal period of 21 days allowed, I would strongly suggest those organisations that feel they may have an interest, should probably lodge their application prior to the expiry of the 21 days so it can be listed, even on the 22nd day so we can keep this thing moving. Because I think we have to continue this thing through to finalisation now with reasonable sort of haste.

15 Right, well thank you for your attendance. This matter is now adjourned and it will actually be a resumption of this particular application at a later date. And I will rely on the parties to inform me when they wish to proceed.

MR O'BRIEN: Thank you, Mr Commissioner.

**HEARING ADJOURNED**