

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. No 577 of 1986

IN THE MATTER OF an application
by the Tasmanian Chamber of
Industries for interpretation
of the Furnishing Trades Award
and the Building Trades Award

re Scope of awards, Definitions
and wage rates

PRESIDENT

HOBART, 28 January 1987

TRANSCRIPT OF PROCEEDINGS

PRESIDENT: I'll take appearances, thank you.

MR EDWARDS: If it please the Commission, **EDWARDS, T.J.** with **MR G. LOCKHART** for the Tasmanian Chamber of Industries.

PRESIDENT: Thank you, Mr Edwards.

MR GILL: If it please the Commission, **MR GILL** of the Federated Furnishing Trades Society of Australasia, Tasmanian Branch.

PRESIDENT: Thank you, Mr Gill.

MR CORDWELL: If the Commission pleases, **CORDWELL, M.** and I appear on behalf of the Building Workers' Industrial Union and the Operative Plasterers and Plaster Workers' Federation, Tasmanian Branch.

PRESIDENT: Thank you, Mr Cordwell.

MR DOWD: If the Commission pleases, **DOWD.** I appear on behalf of the Amalgamated Society of Carpenters and Joiners.

PRESIDENT: Thank you, Mr Dowd.

Yes, Mr Edwards.

MR EDWARDS: Thank you, Mr President.

Initially, just by way of a fleshing out of the history of this matter I'll give a brief overview of events which have led to the application for this interpretation of the awards in question.

Mr Lockhart, a director of Challenge Proprietary Limited, on 28 October 1985 employed a Mr Gary John Clark in his business known as 'Challenge Kitchens', which is situated at 46 Grove Road, Glenorchy.

Mr Lockhart employed Mr Clark as a furniture maker within the terms of the Furnishing Trades Award.

After only 1 day's work it was determined by Mr Lockhart (and not contested by Mr Clark) that his work

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standard was below that which could be deemed an acceptable level and the employment was terminated.

Mr Lockhart, on advice from the Department of Labour and Industry, utilized the provisions of clause 6 (d) of the Furnishing Trades Award, and deemed that neither notice nor payment in lieu was required and acted accordingly.

That provision, briefly Mr President, says that the employment for the first month or so of employment is on a day-to-day basis - a probation period, if you like.

Mr Clark, following the termination of his employment, approached the Department of Labour and Industry who, following an investigation by a Mr Armsby, determined that Challenge Kitchens should pay Mr Clark one week's pay in lieu of notice, because in their view the Building Trades Award had application to the employment contract.

Ultimately a summons issued and the matter proceeded before the Court of Petty Sessions who, on the application of Mr Lockhart's solicitors, adjourned that action to allow this case to proceed before the Tasmanian Industrial Commission.

That, sir, provides a very rough thumb-nail sketch of the events which led to the current application being made by the Tasmanian Chamber of Industries for an interpretation of the Building Trades Award and the Furnishing Trades Award, so as to ascertain the correct award which should have been utilized by Challenge Kitchens in the employment of Mr Clark.

You will have noted, Mr President, that somewhat unusually the application cites 2 awards; namely, the Building Trades Award and the Furnishing Trades Award. The purpose of this is to allow a thorough

MR EDWARDS:

investigation of the scope clauses of both awards, to enable you to determine by interpretation which award actually did have application to the employment of Mr Clark, and indeed, to a number of other employees that are employed at Mr Lockhart's establishment.

It will be our intention, Mr President, to briefly outline where we believe the scope clause of the Furnishing Trades Award applies to the employer, Challenge Kitchens, and the work performed by Mr Clark for that employer.

We intend to supplement that outline by leading evidence as to the nature of the employer's business, the duties carried out by Mr Clark and by a brief inspection at the employer's premises to enable the Commission at first hand to view the work in question.

As an overly simplistic statement of our belief, we believe that Challenge Kitchens is a manufacturer of furniture as described in the scope of the Furnishing Trades Award and that contention is, we believe, supported by the provisions of clause 1, 'SCOPE OF AWARD', Section I, Part II of the Furnishing Trades Award.

In particular, we derive some comfort from sub-clause (1) of that clause, which says in part 1.:

"Any person employed in wholly or partly preparing, packing, manufacturing, or preparing any article of furniture (including built-in furniture) ..."

And it goes on from there.

We are of the belief and intend to prove that Mr Clark was engaged and performed the work of a 'Furniture Maker Grade A' as spelt out in clause 1, Section I, part (i) of the Furnishing Trades Award.

MR EDWARDS:

It is our understanding that the Department of Labour and Industry have determined that Mr Clark was employed under the terms of the Building Trades Award and have reached that conclusion because they believe both the Furnishing Trades and Building Trades Awards both apply and the most generous of those must be applied pursuant to section 53 of the Industrial Relations Act 1984.

That contention is, we believe, incorrect. However, I don't believe anything turns on that in terms of these proceedings. I merely note in passing that for that section of the Act to apply an employee must perform 2 or more classes of work to which different awards apply. And that certainly has not occurred in respect of the current situation.

Mr President, we find ourselves in a somewhat difficult position in respect of proceeding with this application today as it is our intention to call an employee of the technical college to give evidence. However, that person is currently on leave and does not return to work until 16 February 1987.

Additionally I have sought information from the technical college relating to the syllabi (I guess that's the correct way of saying 'syllabus' in plural) ... ?

PRESIDENT:

'Syllabuses' is also acceptable.

MR EDWARDS:

Syllabuses is also acceptable, is it?

... syllabuses of various woodworking courses. However, that information is also currently unavailable until 16 February because of absences on leave until that date, of various employees of the technical college.

Consequently, Mr President, it is my intention this morning to request that this matter be adjourned until a date after 16 February, which will enable me at that time to present a

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PRESIDENT - EDWARDS

MR EDWARDS: more detailed and comprehensive submission without being fettered by a lack of information as I currently am.

In asking for that adjournment I do believe today, or this morning may be utilized profitably by the Commission and the parties, by having an inspection of the employer's premises and briefly viewing the work that is carried out there, so the Commission can obtain a first-hand knowledge of the business of the employer and the duties that were carried out by the employee in question, so that they may latterly be applied to the terms of the award to see where and in which award that employee's employment actually fell.

PRESIDENT: Yes.

Mr Edwards, did I understand you to say that proceedings before a magistrate have been adjourned to allow this matter to go ahead?

MR EDWARDS: That is correct, Mr President. The magistrate, I believe, determined that it was appropriate that this tribunal be allowed to deal with this matter.

PRESIDENT: I see. Then I take ...

MR EDWARDS: Against the arguments of the Department of Labour and Industry, as I understand it.

PRESIDENT: Then I take it that he will consider himself bound by the findings of this Commission?

MR EDWARDS: I think the Act makes him so bound, Mr President. As I understand the terms of the Act, a determination made by yourself in interpretation proceedings is binding on the courts of this land.

PRESIDENT: Yes. Thank you, Mr Edwards.

Mr Gill, Mr Cordwell or Mr Dowd do you wish to say anything at this

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PRESIDENT - EDWARDS

PRESIDENT: stage?

MR GILL: Mr Commissioner, I would like to support the submissions of the Tasmanian Chamber of Industries in the proceedings so far.

PRESIDENT: I take it you believe the Furnishing Trades Award applies then, Mr ... ?

MR GILL: Yes.

PRESIDENT: And I'm sure you don't want to say anything, Mr Cordwell?

MR CORDWELL: Only that, Mr Commissioner, I would support the adjournment at this stage, because I think that the involvement with the technical college will be beneficial to all parties.

PRESIDENT: Yes. Very well, Mr Cordwell.

Mr Dowd?

MR DOWD: I support the adjournment, Mr President, but I'm in two minds as to whether the inspections should take place today or after we have obtained the syllabi from the technical college. I just raise that as a point.

PRESIDENT: Yes.

I can understand that view being expressed, Mr Dowd, but it must be remembered that the purposes of inspections is not to gather evidence, it's merely to understand the evidence which follows. So I don't think either side, if there are any opponents to this application, would be prejudiced by making use of the available time today. I, personally, would be quite interested to see something of the activities of this manufacturer. So, Mr ...

MR EDWARDS: Perhaps just to assist Mr Dowd, Mr President, I might indicate that certainly we don't see the

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MR EDWARDS: inspections today being an exercise of obtaining facts or evidence. It's simply to allow you to view the work so that once we start leading evidence in respect of it you've got a picture in your mind's eye of what we're talking about.

PRESIDENT: Yes. Yes, I think the Commission has made itself very clear on the question of inspections on more than one occasion. There has been a popular misconception that inspections are intended as methods of gathering evidence. That is not the case at all. It's simply to understand the evidence which is expected to follow. And if the parties bear that clearly in mind they need have no fears about viewing premises from time to time.

On that understanding we'll adjourn for the purposes of inspecting the premises of Challenge Kitchens.

MR EDWARDS: Mr President ...

PRESIDENT: Immediately, Mr ... ?

MR EDWARDS: Yes, I think that would be appropriate, Mr President.

PRESIDENT: Yes.

MR EDWARDS: I don't know whether you wanted to consider future programming today. I didn't have any intention of reconvening this morning following the inspections.

PRESIDENT: Yes. Well ...

MR EDWARDS: I am in your hands as to whether you want to try and set a date today or not.

PRESIDENT: Had your name been 'Fitzgerald' and not 'Edwards' I would have most assuredly pinned you down to a date, but ...

MR EDWARDS: It would latterly of course have been changed.

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PRESIDENT - EDWARDS

PRESIDENT:

Of course.

It might not be a bad exercise
anyway, Mr Edwards. If we go off
record.

...

HEARING ADJOURNED