



TASMANIA

*Tasmanian Industrial Commission*

Industrial Relations Act 1984

T No. **9574 of 2001**

**IN THE MATTER OF** an application by  
the Construction, Forestry, Mining and  
Energy Union, Tasmanian Branch to  
vary the Mobile Crane Hire Award

Re: variation and consolidation

COMMISSIONER IMLACH

HOBART, 28 June 2001

**TRANSCRIPT OF PROCEEDINGS**

Unedited

**(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)**  
**(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)**

**HEARING COMMENCED 10.00am**

COMMISSIONER: I'll take appearances.

**MR W. BODFIN:** If the commission pleases, I appear for the CFMEU Tasmania Branch - BODKIN.

5 COMMISSIONER: Mr Bodkin.

**MR P. MAZENGARB:** Good morning, commissioner, PAUL MAZENGARB from the Tasmanian Chamber of Commerce and Industry. If the commission pleases.

COMMISSIONER: Thanks, Mr Mazengarb. Yes, Mr Bodkin?

10 MR BODKIN: Yes, commissioner, the union has filed this application for the purpose of giving substance to the award which has already been made. I refer to the award made by yourself on 19 March when  
15 this year.

Subsequent to that there was a hearing before Commissioner Abey in relation to award interest and I understand that there was an order or declaration made on 2 May in relation to that matter, so we now come to the third and final stage, one would think, of actually varying the  
20 award so as to prescribe relevant conditions of employment and rates of pay.

The union is seeking an award - a consolidated award in the terms of the document that's been filed with the application. In effect that would be virtually a mirror image of the federal Mobile Crane Hire Award so that there would be uniformity between the proposed state  
25 and the federal awards.

As I understand it, there is no opposition to that application and at this stage, commissioner, I would leave my submissions at that and simply state that the union would request that a consolidated award  
30 be made in the terms of the document that's been filed. I have an electronic copy of that document with me which would hopefully facilitate the making of the proposed new award.

COMMISSIONER: Good. Thanks, Mr Bodkin. What do you say about all that, Mr Mazengarb? Not that there was much in the words, but  
35 there's a lot in the end result.

MR MAZENGARB: Yes, not correct. Sorry, the understanding from the union that there is no objection to the application is not correct. I'm not quite sure where that came from. Since the application was lodged on 28 May, received on that date by the industrial commission,  
40 there's been no discussions between ourselves and the union and

unfortunately we do have some concerns with regard to the application and those concerns are heightened, I suppose, by the comments made by the union's representative here before you today, because in those comments and those submissions that have been put to you by the union, the words have been used that it is a virtual mirror image of the federal award. We would say that in actual fact is not the case and if that is the position that's been put to you I would say, with the utmost respect to my colleague on my right hand side, that in actual fact is misleading.

If I can refer you to the application and more particularly to clause 1 under Part III at page 10. The application indicates there what the classifications will be and the weekly rates under 1(a)(i), (ii) and (iii).

If I can take you to clause 1(a)(i) and the last two classifications there of dogger and a separate classification of dogger/rigger, you'll see the wage rates there is the base rate of \$482.40 and \$508.50 respectively.

I'm not quite sure if you're familiar with the federal award applying in this particular area that Mr Bodkin referred to this morning, but for your information, Mr Commissioner, I wish to refer to this and I'll table an exhibit which may assist in comments I'm about to make in relation to my submissions relative to the claim.

COMMISSIONER: **EXHIBIT M.1.**

MR MAZENGARB: In relation to the exhibit M.1, commissioner, the first page is just an indication as to where the following pages come from and I do apologise, there is no numbering in relation to these pages, but you can see that it's an extract from the loose-leaf version provided by the Australian Industrial Relations Commission in relation to the Mobile Crane Hire Agreement (Tasmania) 1981 and the Mobile Crane Hiring Award 1988.

If I can specifically refer you to the second page of that exhibit being Part IV - Wages and Related Matters under the clause 14 of wage rates and more particularly 14.1.1 being the weekly rate for mobile cranes other than New South Wales. I should point out at this stage that there are two rates of pay in the federal award. There are rates that apply to classifications specifically in New South Wales and if you look over the page there are - sorry, I should go the other way - there are rates that specifically apply to states other than New South Wales and then under 14.1.2 there are rates that specifically apply to mobile cranes in New South Wales.

Obviously the rates that apply from the federal jurisdiction into the state awards other than New South Wales come under 14.1.1 and if you look at clause 14.1.1(c), the rates for dogger and dogger/rigger - the two different classifications - are \$453.80 at a base rate and \$487.90 at a base rate for those two classifications respectively.

85 If we look back to the application by the union, they're reflecting rates of \$482.40 and \$508.50 as I've said previously. It appears as though those rates reflect the rates you'll see down the bottom of the page of my exhibit M.1. Those rates reflect the rates under 14.1.2 for mobile cranes in New South Wales.

90 So in relation to the application, again I say with the utmost respect to my colleague on my right hand side, the application does not in actual fact mirror the federal award.

95 The other issue I have of concern is that it appears as though the application reflects the recent safety net adjustment handed down by the Australian Industrial Relations Commission full bench which you would be well aware of, Mr Commissioner. That is reflected in the rates that are before you as part of the application as lodged. That particular safety net adjustment for 2001 has not been considered by this commission through the format of the full bench, therefore we would argue that the rates reflected that incorporate the arbitrated safety net  
100 incorporating the federal decision of May 2001 again is inappropriate and is somewhat pre-emptive relative to what may or may not happen before a full bench of this commission.

105 So in relation to that on both those grounds the TCCI would have to raise its objections to the claim that's been put to you and the requests being made by the union.

I'd like to raise, while I'm on my feet, commissioner, one other matter, and I suppose it's more by way of clarification than anything else, and if you recall, we have had some discussions between the parties including yourself, and we were appreciative of the assistance of the commission in relation to this matter, but having now examined the claim in a little bit more detail and having particularly looked at clause 3 - scope of the award - and the way it's been presented to you today through the application, the TCCI has a little bit of difficulty and concern with regard to that clause where it reads: *Clause 3 - Scope.*  
115 *This award is established in respect of the industry of mobile crane hiring which includes the hire of.*

120 The concern we have - and I understand and I say at this point in time, commissioner - we have discussed this with you before, as I just said, but the difficulty we have with that, with the using the word which 'includes' could in actual fact lead to some ambiguity in the future. And certainly from our perspective we believe that an award should be quite clear and precise, concise and explicit in relation to the scope and to who the award applies.

125 So we would suggest - and I haven't discussed this with my colleague - we would suggest that the word 'includes' be replaced with the word 'means' which in actual fact that clause would then read - or the opening gambit of that clause would read: *This award is established in respect of the industry of mobile crane hiring which means the hire of.*

130 Again, for the purpose of removing any future ambiguity with regard to  
the application of the award, we would suggest that after the third dot  
point first appearing there that after the word 'personnel' there be a  
full stop and that the words 'to clients whose requirements include'  
through to the words 'including the load and haul projects' be removed  
135 from the scope. It is our view that the award should apply to the  
industry and not necessarily be reflective of the clients that might be  
using the award as the employers bound by the award itself and the  
industry they're working in.

Whilst it can be fairly beneficial with regard to an explanatory purpose,  
we don't believe that that would be appropriate to go in the award.

140 But I suppose that's more by way of explanation. I suppose I should  
say that if we can't reach agreement on that I should flag the situation  
that the Tasmanian Chamber of Commerce and Industry would  
contemplate making an application formally to the commission with a  
view to amending the award to reflect what I've just requested.

145 But going back and reiterating, commissioner, the position of the  
Tasmanian Chamber of Commerce and Industry is that we cannot  
agree with the request. The indication given by the union that there is  
agreement on this is incorrect because of the matters I've outlined and  
certainly I repeat again it's our strong contention that the submissions  
150 put by my colleague, Mr Bodkin, in relation to it mirroring the federal  
award in actual fact is not correct. If the commission pleases.

COMMISSIONER: Yes, thanks, Mr Mazengarb. What do you say, Mr  
Bodkin?

155 MR BODKIN: Well, I think all we have here is a misunderstanding at  
the highest, commissioner. My friend has raised three points. Perhaps  
if we take them in reverse order. He raises the question of scope and  
let me preface this by saying that the first hearing we had before you  
in relation to this matter, there was a draft document which as I  
understand it was agreed at that stage and that document is basically  
160 the document that's before you now, except for wage rates which I'll  
come to shortly.

So, yes, I am somewhat taken aback by the comments that have been  
made, but in relation to the scope, of course the scope is in the award  
now and that scope, as I understood, was agreed upon by all the  
165 parties, the terms of it before having the award was actually made by  
yourself, commissioner.

If the TCCI has some difficulty with the scope, the union is quite  
prepared to meet them on that point. My friend has suggested that the  
scope - and this will be the scope of the existing clause, not the  
170 proposed clause, but the scope of the award anyway be amended by  
virtually deleting those words which start at ..[inaudible]..  
requirements include.

175 Just looking at that, off the top of my head I have no difficulty with that. I think to have a scope clause that simply reads - that simply ends at the third dot point is quite adequate and unless the commission itself can see some difficulty, the CFMEU certainly has no difficulty in amending the scope as suggested by my friend. So I don't think that should be a problem.

180 The second matter in reversed order is that the safety net adjustment having been applied to the rates, yes, that is so. When we made this application the federal award was in the process of being varied for the recent federal safety net adjustment and that has occurred in fact in the federal award. So it seemed to me at the time of making the application that that would be the way to go, possibly thinking that  
185 the state commission would have dealt with its own awards by the time this award came before you.

The CFMEU is certainly not seeking to double dip in relation to safety net in Tasmania and I suppose there is two ways that this can be overcome. Either we reduce the rates that are in the document before  
190 you back to what they were in the original draft, that is, to take away the federal safety net, and then the new award would be varied by this commission in the normal way or else these rates would stay in and the proposed new award could operate from the date of the - whatever the date of the - and I think it's a common date in Tasmania,  
195 commissioner, that the safety net adjustments operate. Am I correct or wrong in that?

COMMISSIONER: That's correct but far be it from me to put rates in that haven't been approved by a full bench, put it that way, Mr Bodkin.

200 MR BODKIN: Yes. Yes. I see. So that can be overcome simply by adjusting the rates and the work-related allowances back to what they were in the original draft, so the CFMEU has no difficulty with that. And then presumably the new award, would come before the full bench and then be adjusted back to the rates that are here. So that's a  
205 simple exercise.

The first one, I've been accused of misleading the commission in relation to rates. Far be it from me to attempt to do that and this apparently is to do with the rate for dogger and dogger/rigger. And again when I look at the - I don't know how this has come about - but  
210 it seems just looking at it at the moment it seems my friend may be right that the Victorian rates have gone into this application. If you'll bear with me for a moment, commissioner, I have the recent variation to the - I actually have the federal award as it exists prior to the safety net adjustment and looking at the base rates, the base rate for other  
215 than New South Wales for the dogger is \$453.80 and dogger/rigger \$487.90.

220 Yes, my friend is quite correct in relation to those two classifications and I can assure the commission and my friend there was no attempt or I certainly wasn't attempting to hoodwink people in relation - I don't know how that's happened but the Victorian rates have gone in for those two classifications and I would have no hesitation in adjusting the base rate for the dogger back to \$453.80 and \$487.90 and certainly would agree to that.

225 So it's my view, commissioner, that I think it's more of a misunderstanding than anything else that's arisen between the parties. The union would have no difficulty in making those changes and perhaps with that in view the opposition of the TCCI may be removed.

230 COMMISSIONER: Yes, thanks, Mr Bodkin. We'll go off the record for a minute, thanks.

**OFF RECORD 10.18am**

**ON RECORD 10.26am**

COMMISSIONER: Thank you, gentlemen, for your assistance. I'll adjourn this matter -

235 MR MAZENGARB: Sorry, commissioner, can I just make one comment?

COMMISSIONER: Yes.

240 MR MAZENGARB: With regard to my initial comments/submissions with regard to an indication that I gave that the union may have been misleading the commission, in light of the conference and the discussions and the explanation that's been given through that conference and on transcript, I withdraw that comment and observation unequivocally. If the commission pleases.

245 COMMISSIONER: Thanks, Mr Mazengarb. Now following our discussions, I'll adjourn this matter, but if I am advised within a week's time that the parties have reached agreement and all matters settled and an appropriate amendment is received, this matter will be approved and an order will issue, otherwise I'll recall the hearing.

Is that acceptable, Mr Bodkin?

250 MR BODKIN: Yes, commissioner.

COMMISSIONER: Mr Mazengarb?

MR MAZENGARB: Yes, commissioner.

COMMISSIONER: Thank you, the matter is adjourned.

**HEARING ADJOURNED 10.28am**