



Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. 7268 of 1997
[Now joined with:
T No 5998 of 1995
T No 6275 of 1997
T No 6278 of 1997]

IN THE MATTER OF an application by the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union to vary the Metal and Engineering Industry Award

Re: Clause 8 - Wage Rates, section (3) Engineering Production Juniors - Unapprenticed and (5) Apprentices, by the application of Supplementary Payments to all wage rates as prescribed

T No. 9291 of 2000

IN THE MATTER OF an application by the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union to vary the Metal and Engineering Industry Award

Re: the inclusion of the Third Minimum Rates Adjustment for Apprentices and Junior Workers

COMMISSIONER IMLACH

HOBART, 6 December 2000
Continued from 14 February 2000

TRANSCRIPT OF PROCEEDINGS

Unedited

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

HEARING COMMENCED 2.30pm

COMMISSIONER: I'll take appearances.

MR P. BAKER: Sir, I appear on behalf of the applicant organisation, P. BAKER.

5 COMMISSIONER: Thanks, Mr Baker.

MR R. FLANAGAN: If it pleases the commissioner, FLANAGAN R., for the Australian Workers' Union, Tasmania Branch.

COMMISSIONER: Thanks, Mr Flanagan.

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

COMMISSIONER: Thanks, Mr Watson.

15 First of all, before we start on the serious business, I'd like to congratulate you, Mr Baker, on acceding to the position of secretary. I think it's the first time you've been before us in that capacity. Is that so?

MR BAKER: It may be so, commissioner, but regardless of that or not, I accept the congratulations. Thank you, sir.

20 COMMISSIONER: I propose to join these two and hear them consecutively. Do we all agree to that? Mr Baker?

25 MR BAKER: Thank you, sir. Perhaps if I deal with the specific application, the most recent application that is before you, which is 9291, which deals actually with the third instalment of the minimum rates adjustment process, which was commenced actually in file T7268 of 1997, which commenced this process although actually we didn't commence it until November of 1999.

I would hand to the commission a draft order which outlines the necessary adjustment that's been made to give effect to the third adjustment.

30 COMMISSIONER: **EXHIBIT B.1.**

35 MR BAKER: If you take into account what's currently in the award at page 5 of the most recent amendment, in No. 2 of 2000, you will see, sir, that the wage rates which had been contained within the award have been replaced with a series of percentages only. As a consequence of the application of the last safety net adjustment, which caused some confusion in the reading of the two clauses, it was decided by Deputy President Watling, that the format which now appears in the award would be most appropriate in the circumstances.

To that end the draft order that you have before you is now reflective of the adjustments which have taken place. For example, you will see there, sir, under 3. Engineering Production Juniors, the range of percentages vary from 54.88 to 92.71 and they are replaced by the figures 56.22 through to 95.47 as percentages of the level 2 engineering production employee level 2.

Likewise, sir, with the apprentices. They again have been varied from 39.8 to 83.34 to 41.06 through to 85.45 per cent respectively. I've had a discussion with Mr Watson this morning of the TCCI in respect of the percentage figures and he assures me that they are about as correct as we'll get them. There may be some minor adjustments that need to be made as a consequence of the safety net adjustment on the wage rates as they were varied earlier this year but we will make those necessary adjustments when this process is complete in June of next year.

I did intend to actually advise you sir of the exact financial amounts but I can't seem to find the relevant piece of paper. The file has grown somewhat large over the years. The actual increases, sir, are in descending order under engineering production juniors, \$5.50, \$7.20, \$9.80, \$11.40 and for apprentices the figures are \$6.20, \$7.30, \$8.80 and \$10.40

We would submit to you, sir, that consistent with previous decisions of this commission in respect of this matter and secondly, consistent with the principles of the commission's Wage Fixing Principles, as most recently amended, we would submit to you that consistent with those decisions and also with section 36 of the Act, the public interest test, that the award should be varied and we would submit to you that the award should be varied from the first full pay period on or after today's date. Subject to any questions from yourself, sir, that would conclude my submission on the matter.

COMMISSIONER: What do you say, Mr Baker, about the fact that we don't have apprentices any more?

MR BAKER: That issue was raised with me this afternoon by your associate. The issue that I would raise, sir, as far as I am aware, the terminology, apprentice, still exists in the VET Act of '94. I understand, sir, there is a proposal to give a variance to that and redefine it as part of the new - whatever the new VET Act is called but I'm unaware that that's actually received assent as yet. Has it?

COMMISSIONER: Perhaps we'll hear from Mr Watson or Mr Flanagan of course.

MR BAKER: There is a general phrasing within the *Vocational Education and Training Act* that talks of a trainee. Now, trainee includes an apprentice and so when you look at the phrasing in 5. Apprentices:

The terms and conditions of apprenticeship shall be in accordance with those prescribed in the Vocational Education and Training Act of 1994, the regulations made thereto as administered by TASTA.

5 That is why that is phrased in that manner and as I've indicated, sir, within the state training Act, as I said to you, it actually refers to trainees and then it goes on to talk about - which includes apprentices.

10 The issue I suppose that we need to come to grips with - not so much us, those of us who are familiar with the training terminologies which are used today - but for an employer, if we were to remove the phrase, apprentice, and simply insert a word trainee, I'm not too sure whether the average employer would be able to make head nor tail of it and indeed would in fact find the whole process confusing, as indeed I'm
15 sure many employers are today who find their apprentices referred to as, new apprentices.

COMMISSIONER: Yes. We'll hear what the others say about that, Mr Baker. Is there anything else?

MR BAKER: No, sir.

20 COMMISSIONER: Thank you. Mr Flanagan?

MR FLANAGAN: Thank you, commissioner. Commissioner, we'd support the submissions of Mr Baker. We are of the view that the proposed variation is consistent with the Wage Fixing Principles and does not offend the public interest and in the circumstances where
25 this application seeks to apply to employees the third minimum rates adjustment, which from recollection, has been available since 1991, we're more than anxious that the application in fact be approved by the commission operative from the first full pay period on or after today's date.

30 In terms of the question that you've raised in relation to apprentices, there is certainly some debate, some discussion about the fact that industrial regulation has been slow to reflect the movements in vocation, education and training and this is an issue, as I understand it, which is the subject of discussions, albeit fairly protracted
35 discussions as far as I can ascertain it between the two peak bodies, the TCCI and the TTLC and given that the issue is one of general application across the state, so should it be. It can only be hoped that those discussions and/or debate are dealt with expeditiously so that there is a resolution generally across the state in relation to the
40 matter.

However, it is not appropriate, in our submission, for that issue to be dealt with by the application which is presently before you. The award as it presently stands clearly identifies the category of employment

known as, apprentice, and identifies a rate of pay which is applicable to that category. There may be debate about what the effect of that is, if any, but this application seeks only to apply a wages adjustment to that category of employment which has been available for some 10
5 years and I can have some sympathy with the AMWU having applications in since 1996, given there's obviously been a lot of discussion with the TCCI but that's not uncommon, in our submission.

10 In our view, the award ought to be varied in terms of P.1 and it is proper and appropriate that the application be approved by the commission. If it pleases the commission.

COMMISSIONER: Thanks, Mr Flanagan. Mr Watson?

15 MR WATSON: Thank you, commissioner. When I was actually about to walk into the hearing this was going to be a consent matter. We've considered our position carefully and advised the commission that it still is a consent matter, notwithstanding the comments of our colleagues.

20 However, I must point out, in relation to Mr Flanagan's comments, that the application of these minimum rates adjustments haven't been around since 1997. There are a number of other applications that were joined to this one and I think the discussions and the progressing of this matter have been in accordance with the principles, based on the applicant's proposals, so I don't believe we've had any part in any delays in this particular matter whatsoever.

25 Nevertheless, as I said, the matter is consented. It forms the third part of a four stage process, to move to a full implementation of the minimum rates adjustment process for these categories of employees and therefore it would be our submission that the application doesn't offend the commission's Wage Fixing Principles nor the public interest
30 and it should be approved effective from the first full pay period on or after today's date.

35 The other issue that you've raised, commissioner, about apprentices, there certainly has been some conjecture about the actual status of apprentices under the current legislation and it is an issue. I can confirm what Mr Flanagan and Mr Baker have said to you, that there are discussions going on between peak bodies about, I suppose, seeing if there needs to be any change, to make sure that the current training regime fits the terminology that we have in our awards at the moment.

40 Other than that, commissioner, I don't know that there's anything more that I can add to the discussion on that particular point because we are, if you like, midstream in those discussions and I would imagine if there is to be any changes made to the award system, then it would need to be done on an across the board basis. If it pleases.

COMMISSIONER: Yes. Thanks, Mr Watson. What made me raise it, apart from a reminder there from my associate, was the fact that in another matter there was a dispute over payment to an employee who, under the old understanding, was definitely not an apprentice but the employer called her an apprentice cook. She hadn't signed any papers or anything and then it was raised by Mr Cameron, I think, that there was no definition of apprentice in the award and as a matter of fact, there's no definition of apprentice in the Act, except that slight reference that you've raised, Mr Baker, and that case is continuing on that very question.

What causes me to raise the issue is, I hope people are still being paid under it, that's all, because it is in question, that's all. I certainly don't propose to be the tail wagging the dog but I raise it with the parties here because it seems to me it might be advisable to get something done as soon as possible.

I indicate now that this application will be granted, operative from the agreed date. Thank you.

The next matter, Mr Baker?

MR BAKER: Thank you, sir. Perhaps just to finish that last issue off. I understand that there has been an amendment proposed as far as the industrial amendments before the Legislative Council in respect of clarifying the issue of the definition of what constitutes an apprentice.

COMMISSIONER: Yes. I don't know the exact details but I think it relates to the term 'trainee', Mr Baker.

MR BAKER: Yes. Basically, whether you're an apprentice or a trainee, you are a trainee under what is proposed.

COMMISSIONER: Yes.

MR BAKER: Commissioner, the other matter which is before the commission has in fact been before the commission for a couple of years, to say the least. It has involved a great deal of work undertaken principally by, on the one hand, Mr Flood of the TCCI, and myself of the AMWU, in consultation with my other union colleagues.

Basically, those old applications really relate to a rewrite and a reformatting of the Metal and Engineering Industry Award and that process has been quite extensive and quite complex. When the matter was before the commission on the last occasion, there was some discussions concerning the new classification definition standards which we had proposed consistent with those as found now in the federal Metal Industry Award.

To that end, both Mr Flood and myself had some further discussions and there was an exchange of correspondence between us. Mr Flood in

fact wrote two letters to me and I responded to one of those and there were a number of changes made to the document. I advised your associate recently that we were in a position whereby the document had been all but finalised and to that end I in fact e-mailed a copy of the document to your office.

The document runs to some 88 pages and I also indicated at the time that the only provision which was outstanding between us was a clause pertaining to superannuation. Both Mr Flood and myself seem to have some difficulty in finding an appropriate superannuation clause, for whatever reason.

I did speak to Mr Flood as late as Monday of this week in relation to the classification levels. I indicated to him that the other matters which he had pointed out to me had been in fact varied as far as the award was concerned but he indicated to me that there was still an issue outstanding between us in relation to the phrasing and some of the new classification standards.

He indicated to me that obviously we wouldn't have time to have any further discussions this week but we need just to have those discussions and bring the matter to some finality.

Commissioner, we seem to have done all the work but can't quite seem to finish it. Between us we've written, as I said, an 88 page document and we've had numerous meetings between Hobart and Launceston, we've e-mailed ourselves numerous documents but we can't just seem to get to the finishing line and as I said, we seem to have had this impasse on the superannuation clause. It would appear to be almost ridiculous, that we can't come up with half a page on superannuation.

I really don't want the matter to go on any further than where it is today but the matter needs to be finalised and I would suggest, commissioner - and I haven't spoken to either Mr Watson nor to Mr Flood on this point but my view is, that we actually need to have one last hearing before you and that the document is finalised on that day, come what may.

COMMISSIONER: We can certainly adjourn the matter and fix a day to resume, Mr Baker, but the commission is in the hands of the parties.

MR BAKER: Yes. I think, for example, sir, if Mr Flood and myself can't come to an agreement as far as the superannuation clause is concerned and we come up here at 10.30 in the morning, then I think we would come to you and say, give us some direction about the clause, or if we've still got a hassle with one or two of the classification definitions, I think we would be in a position to accept a recommendation one way or the other as far as some direction is concerned to bring it to a conclusion because, quite clearly, this award is one of the commission's principal awards. The existing award is now

a number of years old. In fact, it's 10 years old. It is out of date with respect to a number of the clauses and for 2001, I think it would be appropriate if we had a new award perhaps in February of next year.

5 COMMISSIONER: All right. Perhaps we'll flag an adjournment, Mr Baker, and we'll see what the others have to say. Mr Flanagan?

10 MR FLANAGAN: We can support the application for the adjournment, commissioner. As Mr Baker has indicated, he's done a lot of work on this as has Mr Flood, I think. Some 12 months ago he provided us copy with the proposal and at that point in time it had dealt with most of the matters, so it's encouraging that the only outstanding issue really relates to the classification descriptors and superannuation and, in particular, superannuation.

15 Given that superannuation is comprehensively dealt with by the Superannuation Guarantee Levy, we would hope that the TCCI could be accommodating of the position put forward by the AMWU and hope that the matter could move forward by consent with the hearing on the next occasion. If it pleases the commission.

COMMISSIONER: Thanks, Mr Flanagan. Mr Watson?

20 MR WATSON: I haven't been directly involved in these protracted negotiations, commissioner, but Mr Flood certainly has and he's advised me that, I guess in short, the position is probably not too inconsistent with what Mr Baker has told you. There's been a number of meetings. The document is just about finalised but I believe that what we need to do is probably get to a point where the parties have agreement on the document, then come to you with the agreed document because I suppose if you go with the track record with this particular matter, it may in fact be wasting the commission's time to have another hearing and turn up again to have the matter adjourned.

30 I'm not suggesting that we drag this on but what I would suggest is that if we want to set some date for the parties to try and reach agreement to, that's fine, but I don't think we should call the matter back on until we actually have agreement or in the alternative, we'd say, these are our points of difference, we'll bring what's consent to you to get the award varied and then the parties can discuss how they deal with the other issues because I suppose the other thing about any non agreed matters is that they wouldn't proceed through the award review process. They'd have to be dealt with by an actual application to vary the award if it was going to be arbitrated. That would be our position, commissioner.

40 COMMISSIONER: Thanks, Mr Watson. What I propose to do is adjourn this matter now, ask you, Mr Baker, to speak to Mr Flood, fix a date for you people to settle it and then if you're unable to settle it, I'll follow Mr Watson's advice or recommendation. We'll fix a date for

hearing and we can either then hear disagreements or make a recommendation, or whatever. Is that acceptable, Mr Baker?

MR BAKER: Yes, sir.

5 COMMISSIONER: We'll follow that course. We'll adjourn this matter sine die but I'd ask the parties to meet with a view to a settlement and if they can't reach a settlement, you let me know, Mr Baker, and I'll set down a date aiming at doing what you said, having something done at least by February.

Thank you. This matter is adjourned.

10 **HEARING ADJOURNED 3.00pm**

