

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 3929 of 1992

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

re minimum rates adjustment and
restructuring of award

COMMISSIONER GOZZI

HOBART, 4 October 1994
continued from 18/8/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Any change in appearances this morning?

MR J. LONG: If the commission pleases, JEFF LONG. I appear on behalf of the AWU-FIME, The Amalgamated Union. I believe **MR HAYES** appeared at the hearing.

5 COMMISSIONER GOZZI: Yes. Thank you, Mr Long. All right, who would like to go first? Oh, Mr Targett, you are a change also, aren't you?

MR P. TARGETT: Yes. Thank you, commissioner, TARGETT, PE, appearing on behalf of the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER GOZZI: Thank you, Mr Targett.

10 **MR P. NOONAN:** If the commission pleases, I appear on behalf of the Shop Distributive and Allied Employees Association, PATRICK NOONAN.

COMMISSIONER GOZZI: Yes. Thank you, Mr Noonan. Who would like to go first? Mr Baker?

15 MR BAKER: Well, sir, first if I just bring you up to date on what's happened since the last meeting - sorry, when this matter was last before the commission. We indicated that - at that hearing we had a document which we were prepared to negotiate on and finalise this matter and that we requested the matter be put - set down in a few weeks time and indeed it was and in that intermediate period of time I've had discussions with both the employers respondent to the award. I have received
20 advice back from the TACC concerning their position. I did have a meeting with the TCCI at which we did have a discussion. There are a couple of things which arose out of that in so far as we are concerned which I indicated to Mr Targett we would attend to, but I've yet to sort of hear from the TCCI as to what their position is in so far as the restructuring of the award is concerned.

25 COMMISSIONER GOZZI: All right. Well it doesn't sound a great deal has happened, Mr Baker.

MR BAKER: Mm?

COMMISSIONER GOZZI: It doesn't sound as though a great deal has happened.

MR BAKER: I don't know. We might be in agreement this morning, I don't know.

COMMISSIONER GOZZI: All right. Mr Long, anything to report?

30 MR LONG: No, I've got nothing further to add, sir.

COMMISSIONER GOZZI: Mrs Dowd?

MRS DOWD: Mr Commissioner, there haven't been any discussions between the TCCI and the ASU in relation to this matter.

COMMISSIONER GOZZI: All right. Mr Noonan.

35 MR NOONAN: No, Mr Commissioner, we've had no discussions with anyone.

COMMISSIONER GOZZI: All right. Mr Joyce, apart from the coffee which really should be in the coffee room, what have you got to report?

MR JOYCE: Commissioner, we've had brief discussions with the AFMEU. What we are seeking to do is have a discussion amongst the parties, most notably perhaps with

the TCCI, just to consider the chamber's original position the possibility of using the federal award's classification structure as a starting point.

COMMISSIONER GOZZI: Well that's been on the table for 12 months or longer.

5 MR BAKER: It's actually been tabled, sir, for 3 years. It was originally - it was developed jointly by the parties as a consent document. The only thing that was missing was the final relativities in the wash up which has been on the table for over a year.

COMMISSIONER GOZZI: Mr Targett.

MR BAKER: Sorry, I apologise, not quite a year.

10 COMMISSIONER GOZZI: Mr Targett?

MR TARGETT: Thank you, commissioner. As Mr Baker quite rightly points out, a meeting did take place between himself and myself on the 1st of September and at that meeting we discussed a range of issues and I would indicate to the commission those issues and some of the outcomes of that particular meeting.

15 Firstly, I undertook to Mr Baker to meet with members of the TCCI that are impacted upon by this award to seek the views of the members and whether they were prepared to negotiate in relation to bring the federal award classification structures and relativities into this state award, and that I have done since the meeting with Mr Baker. I have met with the employers and the employers are happy - in principle - say
20 that they are prepared to bring the federal structure into the state award, subject to negotiating certain components of that structure.

Secondly, Mr Baker raised with me at the time the issue of the conditions for this particular award and advised me that there had been some discussions between himself and Mr Edwards in relation to a conditions document that he had provided to
25 the TCCI some time ago. I asked Mr Baker to send me a copy of that document again, and I undertook to get a copy of that document from the TCCI's perspective from within our organisation.

I have obtained a copy of the document that we have. Mr Baker as yet hasn't sent me the copy that he undertook to do. In addition to that, we also discussed a number of
30 issues revolving around motor vehicle salesmen. There were no commitments by either party to anything over that particular issue until discussions took place over the actual structure.

Mr Baker undertook to talk to the ASU over specific issues which we discussed in relation to the clerical classifications that - and the impact that the proposal of the
35 union would have in relation to that. I'm unaware of whether those discussions have taken place.

We also discussed the question of the parties bound clause and Mr Baker was going to pursue that matter at some stage. Certainly there was no undertaking by him to do so prior to these proceedings, but he was going to undertake to pursue that matter.

40 COMMISSIONER GOZZI: What, to rationalise it, do you mean?

MR TARGETT: I can't say whether that was his final intention, commissioner, we merely discussed the list of unions that were involved and the TCCI's position on the question of the parties bound in relation to the union side of things, from my
45 perspective, is that that is a matter for the unions to sort out. It's not a matter for the TCCI to address.

COMMISSIONER GOZZI: Also be a matter for the commission, mightn't it?

5 MR TARGETT: Well as far as the discussions that should take place in relation to what unions are or aren't involved I was referring to. In addition to that, we discussed whether the K Mart division should or shouldn't remain in the award and basically it was agreed between Mr Baker and myself that that section of the award should be deleted.

COMMISSIONER GOZZI: Why?

MR TARGETT: Because the K Marts are in fact covered by the federal jurisdiction under federal awards and it was thought, between us at the meeting that we held -

10 MR BAKER: Commissioner, if I may -

COMMISSIONER GOZZI: You'll get your chance in a moment, Mr Baker.

MR BAKER: Oh, well I was just going to explain the situation of K Mart, that was all.

COMMISSIONER GOZZI: That's

15 MR TARGETT: In relation - as I was saying, they are covered under federal awards and it was believed between us - and the discussion was only between myself and Mr Baker - the other unions weren't involved - that it may be appropriate to remove them from the award.

We also discussed the position of roadside service and instructors - there was no conclusion to that discussion at the meeting that took place between us.

20 COMMISSIONER GOZZI: Roadside service and who?

MR TARGETT: Instructors.

COMMISSIONER GOZZI: Well how are they covered currently?

MR TARGETT: The scope of the award has them covered, but they are covered by a section 55 agreement.

25 COMMISSIONER GOZZI: So you're talking about - under section 55 in respect to that?

MR TARGETT: That's currently in place, commissioner.

COMMISSIONER GOZZI: Right. Yes.

30 MR TARGETT: As I said, I undertook - additionally, I undertook to meet with the employers which I have already done.

35 In respect to the report back as to what has taken place since the last proceedings, I believe that covers all of the points, so the position of the TCCI is based on the advice from members, we are certainly prepared to look at bringing the federal classification structure and relativities into this particular award. There are some issues that we wish to discuss with the unions in relation to certain aspects of that structure, but in principle, we do not have any opposition to going down that particular path as is sought by the union in these proceedings.

COMMISSIONER GOZZI: Now, Mr Baker?

MR BAKER: Well, it's certainly good news to finally hear that they've finally agreed in principle that the federal structure can be translated into the state structure. That's certainly something which is a welcome step.

5 I think, sir, having heard those comments, it is now probably appropriate that we can actually move to and finalise the structure. There certainly were a couple of matters which were outstanding which we need to sort of look at in so far as the translation of the structure - there's two issues that really need to be resolved. One is the issue of commercial travellers, under the state award which do not appear under the federal award and they need - that issue needs to be addressed, and it will be, but they are
10 the sort of issues which are peripheral to the concept of the translation of one to the other, and having got the in principle position that I think we're not in a position to sort of tidy it up. It's the other - those minor issues that are outside of that which, you know, with application and good faith we can, I believe quickly resolve.

15 Some of the other - perhaps just a couple of the other issues which may require some further thought. One is in relation to K Mart division. Some years ago, Mr Commissioner, the K Mart in agreement with the unions moved to have a separate division inserted into the state award although they were respondent to the federal award. Subsequently, 18 months ago - approximately 18 months, might even be 2
20 years ago now - time slips by - the K Mart took a decision that it simply would no longer honour the terms and conditions outlined under the state award and reverted back to federal award coverage.

COMMISSIONER GOZZI: Well how could they opt out of the federal award in the first place if - ?

25 MR BAKER: Well they didn't. You see, all that happened was that under the state award there were certain matters which were - I suppose one could say were superior to the terms and conditions in the federal award. There was a disagreement over the issue of the rostered day off and working of overtime and a couple of other minor issues and those discussions finished up breaking down and the K Mart simply indicated that, you know, we will walk away from the agreement which we had in so
30 far as the application of the state award is concerned, it is therefore becomes irrelevant to have the provisions - that section of the award remaining.

COMMISSIONER GOZZI: It must have been a funny deal. I mean, I don't see how you can have a state award running alongside a federal award. I mean, if they are respondent to a federal award that award applies, doesn't it? I mean how could they
35 contract out of the federal award?

MR BAKER: I wasn't around at the time, sir, I have no idea. And the reality of life is, sir, obviously you can't.

COMMISSIONER GOZZI: No, that's right.

40 MR BAKER: But that was the situation, and as I said, that's what happened and it's simply a redundant provision - a series of redundant provisions in the award.

In so far as the roadside service and instructors are concerned, the situation there is that there have been other discussions with the TCCI concerning the applicability of having these people covered in fact by the Automotive Industries Award. Those provisions were inserted into this award during a period of some dispute which we had
45 with the RACT over membership and our right of coverage at the time.

Also, at the same time, there were other companies which became involved in providing roadside service as distinct from the RACT, companies such as Motors and - or GMH and Nissan commenced to provide a 24-hour roadside service for their new

vehicle customers. Since that point in time, as I understand it, apart from one minor company which still provides some sort of driving instruction as opposed from the contractual arrangements, the RACT in fact has taken over those service contracts from Nissan and General Motors and who ever else continues to operate this 24-hour service, for all intents and purposes, the people who offer roadside service and vehicle instructors as employees, are in fact covered by the RACT section 55 agreement - with the exception, as I understand it, of a trucking company on the eastern shore that provides truck instruction, and they actually have employees as driving instructors.

COMMISSIONER GOZZI: And that agreement has a term of what - 3 years doesn't it?

MR BAKER: I'm not sure, sir.

COMMISSIONER GOZZI: Yes, you're not proposing to alter that though are you?

MR BAKER: I would have proposed it some time ago, sir.

COMMISSIONER GOZZI: Well what are you telling me?

MR BAKER: Well in so far as the roadside service instructors are concerned, whereas it currently remains as - within the scope of the Automotive Industries Award -

COMMISSIONER GOZZI: Right.

MR BAKER: - there have been some preliminary discussions going back some 6 or 8 months ago concerning removing particularly vehicle instructors out of that award and perhaps moving them into one - an award which may be considered more appropriate - one of the transport awards.

COMMISSIONER GOZZI: Well -

MR BAKER: But that's gone no further than a discussion between Mr Edwards of the TCCI and myself.

COMMISSIONER GOZZI: Well you can discuss that as long as you like but the scope of the award determines where it applies doesn't it?

MR BAKER: Well that's quite correct, sir, but there - as I said, there was a discussion at the time as to whether or not it was more appropriate to be found within the scope of the Automotive Industries Award or whether it was more appropriate to the scope - that section of the scope clause should not to - relate to one of the transport awards. But ultimately, as I said, it now - it really - it's one of those issues which again, sir, I would suggest is peripheral to the - to the - to where we want to go as far as the award itself is concerned and - and resolve the issue of the - of the RS & R federal structure being mirrored into the - into the state structure with some - with some amendments in relation to the clerical structure and also the - the commercial travellers.

COMMISSIONER GOZZI: What sort of amendments are you talking about?

MR BAKER: I'm sorry, sir.

COMMISSIONER GOZZI: What sort of amendments are you talking about?

MR BAKER: Well in so far as the commercial travellers are concerned, they do not appear in the federal award. They currently appear in the state award and it - unless somebody sort of corrects me otherwise, it would be our intention to include a-

commercial traveller's rate - retain a commercial travellers rate within the award simply because the nature of the industry and it applies here.

COMMISSIONER GOZZI: Alright.

5 MR BAKER: I did have some minor discussions with Mr Strickland from the NUW but in so far as the general application of the travellers award is concerned - or the Wholesale Grocers Award I think it is - but that really hasn't gone any further than that. The other issue is in relation to the - into the clerical rates and we need to determine how that will be structure in so far as the award itself is concerned.

10 COMMISSIONER GOZZI: Yes - I mean at the moment the scope of the award is quite prescriptive isn't it?

MR BAKER: Yes it is, sir.

COMMISSIONER GOZZI: Mm. There must be a reason for that.

15 MR BAKER: I presume, sir, it's grown up over the years. We were responsible for the latest addition to that but the - I don't believe there's been any change to that award in a number of years. But there still is actually a couple of grey areas in so far as how it applies to employers, if you like, in mixed industries that employ people that would be employed under the mechanical - sorry - the Metals & Engineering Award and the application of the Automotive Industries Award into sections of their enterprise. That does cause us some concern.

20 COMMISSIONER GOZZI: Well I'll tell you what causes me concern, is that the scope for the award potentially covers a vast number of employees - when I say vast, within the Tasmanian context. There would be a significant number of people covered by this award having regard to the scope.

25 If you look at the scope it goes from (a) to (f) and I would imagine that there would be quite a few employees that - driving school instructors, automotive roadside service people you've talked about which may all be now subject to the RACT agreement. We've got sellers of motor vehicles, replacement parts and accessories - I mean there must be quite a few of those I would have thought around the state. We've got builders, repairers, wreckers, sellers of motor bodies, motor vehicle, caravans, trailers
30 - so there would be quite a few of those. We've got service station proprietors or retailers of motor spirit and oils, and we have automotive engineers - mechanics. And what we have is an award which is really substantially out of date and from where I sit very little happening about it. And that's the picture that I've got about this.

35 MR BAKER: Well, sir, it hasn't been - I made these comments once previously, that it certainly hasn't been for the lack of trying on our part and there has been numerous drafts issued, there's been discussions, there's - and it has unfortunately dragged on quite considerably. I think I made the comments to you either on the record, or certainly off them, that the award, quite frankly, is an embarrassment to us.

40 COMMISSIONER GOZZI: Well so it should be to everybody, because if the award is - if people want to pick up the enterprise bargaining philosophy, whether it's under an industrial agreement or section 61 agreement or whatever, then I think the award ought to at least be up to speed in the context of setting the minimums and at the moment some of things in this award are, I think, a little bit out of date, both in the context of structure and some of the standards that apply generally in industry. I
45 mean I don't know the last time this award has been reviewed. It's quite a significant award that's - it's certainly by any stretch of the imagination in need of rationalising - rationalisation and I would have thought that it warranted some sort of joint effort by the parties over a - this file, as I said last time has been in the commission since 1992.

And I don't know how many people would cover it, but I dare say it would cover quite a number. Now I might be wrong about that, but that's my feel looking at those classifications.

5 MR BAKER: Well as I said, sir, it also causes us concern in areas where we have mixed industries, where theoretically we've got tradesmen working side by side with one another and there is a substantial difference in the wage rate. Fortunately the employer of course to maintain his own sanity pays the higher rate of course, but when you get down to a situation like we have with a couple of companies - when we start to talk about enterprise agreement, and they already point out to us that they're
10 paying over the award payment - substantial over award payment to a section of their work force, then they're somewhat surprised that we want to press the issue even further.

COMMISSIONER GOZZI: Right.

15 MR BAKER: No in so far as the documentation is concerned, there is a document that's been prepared and is available and as I've indicated, sir, I think with very little change to the document can be inserted into the award almost immediately. Now that Mr Targett's indicated that - that there is an 'in principle' agreement. I don't see that there is - you know, we have a problem. There are those other issues which I've indicated which I believe can be resolved speedily

20 COMMISSIONER GOZZI: Alright. Thank you, Mr Baker, that's fine.

MR BAKER: Well perhaps just to sort of finish, sir, I like you, am concerned that's it's sort of gone on for some considerable time. May I suggest one of two courses of action? One is that we either get back to you within a very short period of time with certainly as far as the classification structure is concerned, a document for you to
25 submit - oh, sorry - to insert into the award, or secondly, that you convene a meeting of the parties where the outstanding issues can be discussed and finalised, or perhaps the third alternative is, is that we come back to you within a very short period of time with an almost agreed document and we submit to you any of those outstanding matters to be arbitrated at that time in order that it can be finalised. In so far as the
30 conditions of the award is concerned, I apologise to Mr Targett for not giving him a copy of the document but as I indicated to him at the time, I would submit that that document is all but - somewhere between three quarters - sorry two thirds and three quarters finalised. I don't see him agreeing with me so perhaps he's not going to commit himself that far, but -

35 COMMISSIONER GOZZI: Well I thought we're really at the stage today of progressing it a lot further than what we obviously are able to, having regard to what was said last time, which I -

MR BAKER: Well, Mr Commissioner, this is the first we've ever had an 'in principle' agreement from the TCCI.

40 COMMISSIONER GOZZI: Well notwithstanding, the TCCI's agreement or the TCCA's agreement and whoever, I think you were all content to have it arbitrated last time we met. I'm prepared to go that way today. I don't want to call the bluff, Mr Baker.

MR BAKER: I don't make flash statements like that, Mr Commissioner.

COMMISSIONER GOZZI: Alright. Mr Long, anything further you want to say?

45 MR LONG: Oh, the only further comments I would like to say, sir, that - and I agree with Mr Baker - that it has been an ongoing saga and nothing has appeared to reach

finalisation and I seek the assistance of the commission to resolve the matter one way or the other.

COMMISSIONER GOZZI: Alright, thanks, Mr Long. Mrs Dowd, anything further?

5 MRS DOWD: Yes, Mr Commissioner, in the structure that's in the federal award there are only two classification for clerical employees; one is called Record Keeper and the other is Record Keeper (Other). Those classifications have been inserted in the and been in for a long period of time. The Australian Services Union is not a party to that federal award and I do not believe that those two classifications should be imported from the federal structure into the state award, but the structure that we actually
10 have for the Clerical & Admin Award is more appropriate for the employees that actually work in this state. At this stage, we haven't had any further discussions with Mr Baker since he's had his discussions with Mr Targett. If the commission pleases.

COMMISSIONER GOZZI: Yes, thank you, Mrs Dowd. Mr Noonan, anything further?

15 MR NOONAN: No, I will be anxious to see the matter concluded, Mr Commissioner, and anxious also to see the proposed document.

COMMISSIONER GOZZI: Very good. Are you going to have another shot, Mr Joyce?

20 MR JOYCE: Yes, commissioner, perhaps just to respond to my colleague from the ASU, my colleague might not be aware that the retail motor industry employers at a national level are talking with the ASU at a national level to see if it's possible to introduce clerical classifications into the federal award. It is possible that it will be a Repair Service and Retail Award Part 2 - Clerical. The commission might be interested to learn that there is currently a federal Vehicle Industry Repair, Service and Retail Award (Clerical) for Queensland that does have numerous clerical classifications and the retail motor industry employers are seeing if it's possible by consent to have more
25 comprehensive clerical classifications introduced into the federal award and perhaps in the near future if that was to be successful then that might be once again an appropriate point to consider some or all of those classifications into the - into the Tasmanian state award.

30 COMMISSIONER GOZZI: Thank you, Mr Joyce. It might be the tail that's going to wag the dog - if you get my drift. Mr Targett, anything else? You might as - fine - we'll go off the record.

OFF THE RECORD

35 COMMISSIONER GOZZI: It's my understanding that the parties will meet to discuss the outstanding issues in respect to this matter on the 12th October. Also I would appreciate if you would look at the possibility of a short inspection program involving a number of classifications which are representative of the award, and a variety of classifications covered by the award and the matter is set down for hearing continuation on the 8th November.

40 MR TARGETT: Commissioner, could I just ask a question for clarification purposes? Would you intend that on the 8th November inspections take place or would that be progressing the matter and then inspections subsequent to the 8th November.

45 COMMISSIONER GOZZI: Well I thought maybe inspections prior to the 8th November if that was possible. Well it depends how far you get? If the 8th November you're ready to wrap it up, then I'd like to be in a position where I've seen some of the classifications where the scope of the award applies beforehand, but I'll leave that in your hands after your 12th October meeting then perhaps we'll be in a better position to see where you're heading.

Alright, well these proceedings are adjourned to 10.30 on the 8th November. Thank you.

HEARING ADJOURNED