

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984
s.23 application to vary an award

**The Federated Ironworkers' Association of Australia
Tasmanian Branch
(T.2214 of 1990)**

WIREWORKING AWARD

COMMISSIONER P A IMLACH

13 November 1990

Wage rates - State Wage November 1989 - Structural Efficiency Principle -
second stage

REASONS FOR DECISION

This application made under Section 23 of the Act by the Federated Ironworkers' Association of Australia, Tasmanian Branch (the Association) was for the second 3% Structural Efficiency increase to be implemented in the Wireworking Award (the Award).

Mr T Edwards, who appeared for the Tasmanian Confederation of Industries (the Confederation) on behalf of Titan Wire Products (the Company) and for the Metal Industries Association of Tasmania, produced an exhibit which was a copy of an agreement between the Confederation and the Association made under the Structural Efficiency Principle.

Mr Edwards proceeded to go through the agreement and explain it.

Part I of the agreement was a general statement of principle by the parties as to what they perceived the Structural Efficiency Principle to mean and how they proposed to implement it in the Wireworking Award.

The latter proposal was outlined under the following headings in Part 1 of the Agreement as follows:

- "(i) new classification definitions based on skills.
- (ii) new wage rates based on appropriate relativities to the base grade tradesmens classification (T1).
- (iii) inclusion of a provision for the breaking of annual leave.
- (iv) extension of the time within which annual leave must be taken from 6 months to 12 months.
- (v) inclusion of provisions for annual close down.
- (vi) inclusion of a provision requiring an employee to carry out a broad range of duties using any appropriate tools and equipment subject only to appropriate training being provided.

- (vii) introduction of a detailed dispute settlement procedure.
- (viii) increase the spread of ordinary hours from 7am - 5.30pm to 6 am to 6 pm.
- (ix) inclusion of a provision that time worked outside the span of hours be included in the calculation of ordinary hours of work.
- (x) introduce provisions for working shifts in excess of 8 hours up to 12 hours by agreement.
- (xi) extension of the period in which a meal break must be taken from 5 hours to 6 hours by agreement.
- (xii) introduce provision for the staggering of meal breaks.
- (xiii) introduce a new clause - Structural Efficiency which embodies the establishment of mandatory consultative mechanisms including provisions for enterprise agreements.
- (xiv) introduction of a training provision to deal with the skill acquisition required by the new classification structure.

As well the following issues were said to be agreed in principle:

- (a) introduction of adult apprenticeship provisions.
- (b) on-going negotiation of productivity and efficiency issues through the enterprise consultative procedure established by the parties as part of the structural efficiency negotiations.

Part 2 of the agreement contained draft orders for amending the Award to take account for all the relevant items mentioned in Part 1. In particular it provided definitions for the new classification levels to be introduced into the Award.

Part 3 of the agreement contained the proposed Minimum Rate Adjustments in four steps on top of the second 3% Structural Efficiency increase. No dates were allocated to the adjustments which were said to be, "not automatic, but, subject to application."

Part 4 of the agreement detailed how the changeover from the present classification system in the Award to the proposed new system outlined in part 2 would be effected.

Part 5 of the agreement outlined procedures for monthly consultation meetings between the local parties: this consultation process was primarily aimed at maintaining communication between the parties at job level, both ways.

Part 6 of the agreement contained details of (a) skills listing (b) skills audit and (c) skill evaluation (a proposed allocation of current employees of the Company according to their assessed skills, to the new classification structure). Also included in this Part were the new wage rates giving increases for adults ranging from \$7.50 per week up to \$15.00 per week: apprentices and junior rates were expressed as percentages of relevant adult rates.

One item which was the subject of much debate at the hearing was the standing of drivers and the Transport Workers' Union of Australia, Tasmanian Branch (the TWU) in this Award. Mr Edwards was happy that the driving classifications be removed from the Award, but he said that was because there were no full-time driving positions in the industry at present: he did not wish the TWU to think as a result, that any employee in this industry would be automatically covered by the new Transport Workers General Award were he to undertake some part-time driving duties amongst others. One employee apparently does a small amount of driving and this is listed (amongst other skills) in his skills audit.

Mr Hansch, who appeared for the TWU, was adamant that the least amount of driving brought an employee within the jurisdiction of the TWU and a TWU Award. He said that an employee excluded from TWU award coverage would in fact be underpaid by TWU standards. I am not sure whether or not Mr Hansch was referring to the effect of Federal Award coverage or the new State Transport Workers General Award coverage, but the same conclusions apply in either case.

If another award were found to cover the part-time driving duties involved (either State or Federal) as well that may be, then industrial law may require that such duality be recognised, however pursuit of such technicalities is left to the parties or individuals. The advisability of such a course should depend only on the degree of financial disability otherwise experienced by the employee concerned.

In all the above-mentioned context, if the driving classifications were removed from the Award and a full-time driving position (or significant part thereof) later were to be introduced, the new State Transport General Award would and should apply in this industry save and except if a Federal Award was also found to apply at the same time.

It would be entirely within the spirit and the letter of the Structural Efficiency Guideline for the current driving classification provision in the Award to be deleted on the grounds that there was no full-time driving job offering. On the submissions put to me, the driving duties that make up part of one only employee's duties were not significant enough to warrant consideration of dual coverage (either award or union wise).

Because the current Structural Efficiency Principle does envisage just such a situation as this - the incorporation of duties different in nature in the one classification, to quote:

"eliminating impediments to multi-skilling and broadening the range of tasks which a worker may be required to perform;"

I confirm the deletion of the driving classification provisions from the Award (as reflected in the draft order in Exhibit E1), nevertheless being mindful of what I have already said on the matter.

One other matter will affect this decision and that relates to what in effect is a proposed "enterprise agreement" provision in the agreed draft order. It is to be found at subclause (d) of clause 29 - Structural Efficiency on page 25 of Exhibit E1.

I am unable to accept some of the provisions in this subclause because I believe they are contrary to the Act. I refer specifically to:

- (i) "the changes sought shall not affect provisions reflecting State Standards"

The term "State Standards" has no definite meaning and should not be included because it will only lead to confusion and disagreement.

- (ii) "any agreement shall be subject to approval by the Tasmanian Industrial Commission and, if approved, shall operate as a Schedule to this award and take precedence over any provision of this award to the extent of any inconsistency."

An agreement between local parties may only be properly approved by the Commission if it is brought forward as an application to amend the relevant award or an application for registration of the agreement is made under Section 55 of the Act. An agreement contrary to an award could not have any legal standing unless it was endorsed through the procedures required by the Act.

As a result of the foregoing I propose to omit subclause (d) of Clause 29 in the draft order and references to it in clause 20 - Meal Breaks and clause 23 - Shift Work, but should the parties wish to bring forward a revised subclause consistent with the requirements of the Act I would be only too pleased to endorse it.

Putting aside the problems raised by the TWU, I am satisfied that the parties to the Award have fulfilled the requirements of the Structural Efficiency Principle in that they have demonstrated to me "that they have cooperated positively in a fundamental review of the award and are committed to implementing measures aimed at improving the productivity and efficiency of the industry, and providing workers with access to more varied, fulfilling and better paid jobs."

Apart from the deletion of the subclause I have mentioned, I endorse the draft order contained in Exhibit E1.

This award will operate from the first full pay period commencing on or after 15 October 1990: an appropriate order is attached.



A Long for the Federated Ironworkers' Association, Tasmanian Branch.

B Hansch for the Transport Workers' Union of Australia, Tasmanian Branch.

T Edwards with P Goodhew for the Tasmanian Confederation of Industries and the Metal Industries Association of Tasmania.

Date and place of hearing:

1990.

Hobart:

October 15.