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AUSCRIPT

TRANSCRIPT OF PROCEEDINGS

O/N 3344

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER T.J. ABEY

T No 12801 of 2006

T No 12802 of 2006

BUILDING TRADES AWARD

BUILDING CONSTRUCTION AWARD

Applications pursuant to the provisions of section 23(2)(b) of the Industrial Relations Act 1984 by the Construction, Forestry, Mining and Energy Union, Tasmanian Branch to vary the above awards re meal allowance

HOBART

11.00 AM, TUESDAY, 3 OCTOBER 2006

This transcript was prepared from tapes recorded by the Tasmanian Industrial Commission

HEARING COMMENCED

[11.00am]

PN1

MR T. BENSON: I appear on behalf of the CFMEU, Tasmanian Branch.

PN2

MS S. HAAS: I appear for the Tasmanian Chamber of Commerce and Industry Limited.

PN3

THE COMMISSIONER: Thank you. Mr Benson, I understand this matter is not a consent one, is that the position?

PN4

MR BENSON: I believe that is the case, Commissioner, yes.

PN5

THE COMMISSIONER: Yes, well, I am in your hands.

PN6

MR BENSON: I have got a number of notes I have made here, Commissioner, I would like to read onto transcript.

PN7

THE COMMISSIONER: Yes.

PN8

MR BENSON: Is it okay if I sit, I have got so good arthritis?

PN9

THE COMMISSIONER: Absolutely.

PN10

MR BENSON: The position is traditionally that the union has sought to maintain its nexus with the Federal awards, the NBCIA, Commissioner. I bring to the Commission's attention that in the union's recent application for variation of the State building awards of 18 September 2006, of which I have copies here for the Commission and for my learned friend there.

PN11

The union did not seek to maintain a nexus as was the past practice. The reason was because the State building awards were \$20 in excess of the Federal awards at that time. The differential occurred as a result of the State wage case, T12395 of 2005, the decision of 27 July 2006. For the information of the Commission, CFMEU discussed the State wage case application with the TTLC and sought that they not seek to increase the meal allowance to the building awards because of the existing nexus at that time.

PN12

The union was awaiting a hearing of the Australian Fair Pay Commission, AFPC, that we thought would address the expected and traditional national wage case issue. Employees reliant on Federal award outcomes are still

awaiting some form of wage justice from the Howard coalition Government's wage fixing body, THE AFPC. My tip is don't hold your breath, sir. The Federal Government purports to be the workers' friend, you know.

PN13

When it became obvious that the highly political body of the AFPC was not going to meet to determine minimum wage rates for those covered by Federal awards at any time soon, the labour councils from New South Wales, West Australia, South Australia and Tasmania determined that they should apply for wage justice within the State jurisdictions for all employees on or covered by private sector awards. Tasmania's application by the TTLC was T12395 of 2005.

PN14

I suppose to cut a long story short, Commissioner, the CFMEU, its building awards were adjusted by \$20 per week and the application itself and the intent of it was to increase all private sector awards and also to the extent of meal allowances by \$13.60. The only reason that I understand the State building awards weren't adjusted at that point in time was because it had not been sought by TTLC. What we are saying now is that there is no reason why those awards shouldn't be adjusted now. In fact we encourage the Commission to do so. There is no existing nexus now, it looks as though that nexus won't be there going into the future, there is no reason why employees under those State building awards now should be denied the \$13.60 as the decision determined should be passed on to all private sector awards.

PN15

THE COMMISSIONER: What is the position of allowances in the national award now?

PN16

MR BENSON: The national award hasn't been adjusted at all since the national wage case of 2005 to my knowledge, Commissioner.

PN17

THE COMMISSIONER: And you said now the province of the Fair Pay Commission?

PN18

MR BENSON: Well, the position of the Fair Pay Commission is that it will determine all wage rates and increases into the future for those Federal awards. At this point in time it hasn't met. I don't know when it intends to do that, no idea at all, but because that didn't occur and the national wage case didn't occur that is the problem that has arisen here.

PN19

THE COMMISSIONER: But what I am saying is - because we are all on a learning curve, is it the position that the AIRC is not able to vary allowances as distinct from - - -

PN20

MR BENSON: That is correct, that is correct. The responsibility has been handed over to the Australian Fair Pay Commission.

PN21

THE COMMISSIONER: For wage rates and allowances?

PN22

MR BENSON: Yes, that is my understanding, yes.

PN23

THE COMMISSIONER: Ms Haas, what is your position?

PN24

MS HAAS: Thank you, Commissioner. If the Commission pleases the Tasmanian Chamber of Commerce and Industry Limited oppose these applications by the CFMEU to increase the meal allowance in the building trades out of building construction awards on the following basis. The State wage case decision of the Full Bench in 2006 at paragraph 108; I have handed up a bundle of documents, Commissioner - - -

PN25

THE COMMISSIONER: Yes.

PN26

MS HAAS: - - - this is the first one on the pile. At paragraph 108 it states:

PN27

Meal allowances will be increased by \$13.60 in accord with the agreed formula. The agreed formula ...(reads)... in which print M9675 refers.

PN28

I have also handed up a copy of that decision, Commissioner. This decision resulted in work loaded expenses increasing in line with the safety net adjustments with the actual increase being determined on the safety net adjustment insofar as it related to the tradesman's rate of pay. As a consequence of that formula work loaded expenses were adjusted by 3.45 per cent. This is at paragraph 107 of the State wage case decision on the front page of the bundle that I have handed up, Commissioner.

PN29

We acknowledge that the Tasmanian Industrial Commission has in the past safety net cases dealt with arguments for the applicant to increase some meal allowances in various awards by the relevant increase in the CPI where those meal allowances have been increased the previous year. Just as Unions Tasmania this year State wage case sought to increase the meal allowance from 13.10 to 13.60. The claim from Unions Tasmania made specific reference to an increase in the meal allowance at page 51 of its formal submission to the Full Bench. They also attached, attachment 4, a list of those State awards for which they were seeking to increase in meal allowance to \$13.60.

PN30

That is the last copy of the documents that I have handed you, Commissioner. You will note the building awards are not listed in this attachment. With respect we do not leave this open to the CFMEU to seek an increase in the meal allowance to \$13.60 for these awards. The meal allowances were below - are below \$13.10 threshold. The unions request is part of their plans for expense related allowances that the meal allowance increase in line with the CPI. The CFMEU sought this - sought to do this in previous applications and the TCCI did not oppose those applications. We submit that that is the appropriate way for the meal allowance to be increased in these awards.

PN31

Now, I take on board what Mr Benson has said about the nexus and we say that there is - we understand his position but we don't think that that is an appropriate vehicle because the nexus has broken. To be honest with you, I have never had this before; I normally just say I consent, so I am not sure - the Fair Pay Commission has given an undertaking, we understand, to have something out by the end of spring. We don't know what that will be, whether that will be their decision or what it will be but that have indicated they will have something out by the end of spring, so - - -

PN32

THE COMMISSIONER: Perhaps the good weather today will spur them into action.

PN33

MS HAAS: It may do. So we say the appropriate action for the union would be to wait and see what that happens with the Federal awards but of course that is entirely up to them. Regardless we say it is not appropriate for these awards to be - to have their meal allowance increased to \$13.60 at the moment.

PN34

THE COMMISSIONER: Yes, thank you. Thank you, Ms Haas. I note - I haven't read the Glass Merchants decision, which of course I will, but I notice it is dated 21 March.

PN35

MS HAAS: Yes, Commissioner, it is a very old decision.

PN36

THE COMMISSIONER: 21 March - I see, it is 1996, not 2006.

PN37

MS HAAS: That is right, yes, it is very old. That is where they - the formula is worked out.

PN38

THE COMMISSIONER: Yes, yes, very well. Mr Benson, do you have anything in response?

PN39

MR BENSON: Yes, Commissioner, if I might. Matter number T1793 of 2006, that was the variation of the meal allowance to the Mobile Crane Hiring Award. The Mobile Crane Hiring Award sat at \$10.50 and was varied to \$13.60 after the State wage case. Now, to me that indicates that the capacity is there and I seek that the Commission adjust the building awards accordingly.

PN40

THE COMMISSIONER: Yes, thank you. Yes. I will reserve my decision and hand down a written decision hopefully in the very near future. The Commission stands adjourned.

ADJOURNED INDEFINITELY

[11.17am]