



Tasmanian Industrial Commission
Industrial Relations Act 1984

T No. **9034 of 2000**

IN THE MATTER OF an application by
the Tasmanian Chamber of Commerce
and Industry Limited to vary the Metal
and Engineering Industry Award

PRESIDENT LEARY

HOBART, 24 January 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 12.35pm

PRESIDENT: Could I take appearances, please.

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

PRESIDENT: Thank you.

MR P. BAKER: President, I appear on behalf of the Automotive,
Food, Metals, Engineering, Printing & Kindred Industries Limited, P.
BAKER.

10 PRESIDENT: Thank you. I've called this on, first of all, to see
whether it is to proceed and if it is, to look at some programming and
some indication as to what's required. It's a TCCI application. Mr
Watson?

15 MR WATSON: Thank you, president. I take it that you've got no
problem with what it's about and what we're trying to do with the
award. Do you need any explanation on that?

PRESIDENT: I understand what the application's about. I was just
going to ask, there seems to be the view that it should go to a full
bench and I was going to ask you about that.

20 MR WATSON: I think it probably is a full bench matter, on the basis
that it is going to the issue of annual leave and annual leave
payments.

PRESIDENT: Although it's an argument about an anomaly, is it not?

25 MR WATSON: That's part of the argument but if the application were
granted, then it would actually change the way annual leave is paid.

PRESIDENT: Okay.

MR WATSON: I don't think we'd be arguing with you that it's not a
full bench matter but if it is determined that it isn't, well, I guess we
won't argue either way.

30 PRESIDENT: It might cut out the middle man if we go straight to a
full bench.

MR WATSON: The application itself has been the subject of some,
can we say, rather colourful correspondence between the parties and it
would appear at this point, obviously subject to what Mr Baker has to
35 say, that I would believe that there's probably not going to be
agreement on the matter so, therefore, unless the union position
changes, I would imagine that we simply need to set a date for hearing
or conciliation prior to and then hearing if it doesn't resolve it.

PRESIDENT: That might be a way that we can go. Perhaps if I hear from Mr Baker to see whether their position is the same as it was according to some of the correspondence that's within the file and what his view is to how the matter should proceed.

5 MR BAKER: Thank you. I was unsure as to whether or not in fact I had forwarded a copy of the letter that I'd sent to Mr Edwards, to the commission but apparently I have.

PRESIDENT: That's the letter dated 1 June?

10 MR BAKER: Yes. Our position is as per the correspondence and without going into all the ins and outs today, I think our position is as per that letter. The other issue which I would raise at this stage is, my view, that anyone wishing to avail themselves of the Wage Fixing Principles to make an application to make a provision either above or below the safety net needs to do more than put down two or three dot
15 points in a two page letter.

I think there needs to be a substantial submission made -

PRESIDENT: That's a reference to the application, is it?

MR BAKER: Yes, to the application, itself. That you need to make a point to simply say, it's not consistent with the provisions in the Metal
20 Trades case of 1972 or, does it comply with the federal award equivalent. I find simply unsustainable.

The TCCI on a number of occasions before this commission have argued that references to the federal award in this industry, whilst relevant, are not necessarily to be used as a benchmark for setting
25 provisions in this commission and I go no further than to refer back to the tool allowance, which was the subject of some discussion in an earlier matter before us today.

PRESIDENT: Yes.

MR BAKER: But having said that, I appreciate the nature of the
30 application which was made and the letter which I wrote in June of this year was in fact coloured by, to quote Mr Watson, was coloured by the fact of the ongoing dispute that we were having at Elphinstone's at the time which in fact is where this application originally arose out of.

I understand the thrust of the application that's before us. I would say
35 to you, president, that the wording which is in this award is not unique, so I just say no more on that.

PRESIDENT: As far as the leave provision is concerned, is that so?

MR BAKER: As far as the leave provision is concerned, it is not unique.

PRESIDENT: Are you saying that it appears in other awards of this commission or, you're not going to say too much more at the moment.

MR BAKER: I'm not saying anything else about that. I'm just saying, it's not unique.

5 PRESIDENT: All right.

MR BAKER: I suppose what is unique is that it has never been an issue in the decade that it has been in the award.

PRESIDENT: So, there's not been an issue about the application of it, that you're aware of?

10 MR BAKER: Unaware of. Presumably, if there hadn't been a dispute at Elphinstone's, the application would never have arisen.

As I indicated, president, I understand the nature of the application before you. It may be preferable if there is some form of - perhaps a conciliation conference between us which may be able to find -

15 PRESIDENT: Yes. That has some merit.

MR BAKER: - some way around it. I'm not disposed to running an argument before the full bench and I'm sure neither is Mr Watson.

20 PRESIDENT: Mm. Perhaps if we look at organising a conciliation conference as a first step and then if that's not successful, we may then have to proceed down that other road. I tend to agree, it's not the sort of matter that's going to bring much delight to a full bench or to the parties presenting the case and if what you say is that it's not a unique provision we could be opening up Pandora's box and I would like to try and avoid that if that's possible.

25 I will possibly do it myself. I will list it for a conciliation conference in due course and see whether we can resolve it that way and then, if not, we'll have to look at where we want to go with it in the future.

Neither of you want to put anything at this stage?

30 MR WATSON: No, president. I think some of the comments made about the application I'll just let go through to the keeper at the moment.

PRESIDENT: Yes. I'm not making any comment about that.

35 MR WATSON: We'll address those at the appropriate time if we need to but I think if we move into conciliation as the next phase, that's the appropriate course at this point.

PRESIDENT: You are happy with that. On that basis, this matter will be adjourned and will be relisted for a conciliation conference in due course.

This matter is adjourned.

5 **HEARING ADJOURNED 12.43**