



TASMANIA

*Tasmanian Industrial Commission*

Industrial Relations Act 1984

T No. **9320 of 2000**

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

Re: reformatting of award

DEPUTY PRESIDENT WATLING

HOBART, 13 March 2001  
Continued from 7 February 2001

**TRANSCRIPT OF PROCEEDINGS**

Unedited

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

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**HEARING RECOMMENCED 10.33am**

DEPUTY PRESIDENT: No alteration to appearances?

**MR M. WATSON:** There is today, Mr Deputy President, MARK WATSON, appearing for the Tasmanian Chamber of Commerce and Industry.

DEPUTY PRESIDENT: Thanks, Mr Watson. Mr Baker, we've got a report?

MR BAKER: Yes, sir. Two things - following from the last occasion we were before you, I took on board those discussions that we had in relation to making certain changes to the award as proposed. I did actually, first of all, have some discussions with the VACC in relation to their ongoing role within the award. I understand an officer of the VACC is to or may have already done this, and that was to talk to the acting registrar on the one hand and on the other, they did indicate to me that they may in fact speak to yourself directly.

DEPUTY PRESIDENT: They certainly haven't done that and I've no report from the acting registrar in relation to contact there.

MR BAKER: Well, I can't take that conversation any further.

DEPUTY PRESIDENT: No, I appreciate that but I'm just letting you know that no one has contacted me.

MR BAKER: Well, that was the advice that they provided to me following the discussion which I had with them and I'm still none the wiser as to whether or not there is in fact a legal entity known as the TACC or whether in fact that organisation has been totally subsumed into the VACC. I can't comment on that either, other than to indicate to yourself that I have in fact spoken to the VACC in relation to it.

DEPUTY PRESIDENT: Thank you.

MR BAKER: In relation to the other matters, there were three principal matters that we needed to deal with as a consequence of the discussions that we had with you previously. They were in relation to the maintenance of the appendices as contained in the award and two of those appendices have been deleted. The third appendix in relation to the implementation of the classification structure I have rewritten and perhaps if I just actually hand to you a -

DEPUTY PRESIDENT: It's only matter for information, I take it, at this stage?

MR BAKER: Yes, Mr Deputy President. The first page is actually page 14 of the previous agreement which I'll come back to but you'll see that the appendix has been retitled, Implementation of the Classification

Structure, and I have detailed that consistent with where we are today rather than where we were in 1994/95 and unfortunately, due to a bit of a muck up with me in relation to it, Mr Watson's organisation really has not had the opportunity of going through it in any great depth but this is a proposal which I would put forward as to a rewrite of the existing clause.

Basically, I've taken out all that that relates to the 1994/95 period so the classification or the implementation from the old individually based classification titles into the new levels has been deleted consistent with the deletion of appendices A and C and I've also varied the issue of modular training. You will see, that has disappeared. That has been replaced with basically the comments pertaining to nationally endorsed competency standards and the other thing which I've also done in relation to the post-trade certificate, I've renamed that appropriately as the AQF4.

At the end of that clause, it talks of internal classification and award alignment, which again goes back to 1994/95. I've simply removed that altogether. I will make available to Mr Watson's organisation and a copy to you, sir, of the specific changes that I've made in relation to that classification structure so that, hopefully, it now does reflect a currency as to what the situation is as opposed to the structure that currently appears in the award as it stands today.

The other issue I addressed was in relation to apprentices, as contained on page 14 of the new document and in a very, very brief discussion with Mr Watson, he's indicated to me that he has quite a comprehensive definition of apprenticeship which may be somewhat a little more lengthy than my one line under a contract of training, which I've put there. I look forward to receiving that.

The other thing which I should have done which I overlooked and that was the specific classifications detailed there from automotive electrician through to diesel mechanic. Those classifications, a number of them, are in fact no longer relevant as such. For example, if you took automotive electrician, that should read 'light vehicle mechanic-automotive electrician'. We need to tidy those up.

The other thing which I've done in relation to the wage rates, previously the award simply said first year 42 per cent, second year 55 per cent, et cetera. I've actually included in there, completion of the first year of training, because although the training course is now comprised of competency standards or units of competency and not necessarily time-based, the system that we have currently at the present time is still time-based within the levels of competency.

An employee under what I propose there would still complete four years of training but as to whether or not the four years actually took four years in length of time, would be dependent upon the completion

of the competencies which will be allocated against first, second, third or fourth year of the training.

5 DEPUTY PRESIDENT: Won't you have to do something then in the wage rates for apprentices then to talk about those people that qualify within the four-year period or earlier than the four years?

MR BAKER: My view would be that the employee completed the fourth year of training, and perhaps this is something that I will need to talk to Mr Watson about -

DEPUTY PRESIDENT: In two and a half years.

10 MR BAKER: That's right and it's signed off and TAFE or whoever the provider is who actually issues the qualification, then I would expect that person to be paid the adult trade rate.

DEPUTY PRESIDENT: Does it go so far as to say that?

15 MR BAKER: I'm not too sure whether it actually specifically says that.

DEPUTY PRESIDENT: Because it talks about the completion of the fourth year of training. Does that mean four years of training or does it mean that they've undertaken studies that would normally be undertaken in the fourth year of their training?

20 MR BAKER: Yes.

DEPUTY PRESIDENT: It leave a lot to the imagination.

MR BAKER: There's a question there, isn't there?

DEPUTY PRESIDENT: Yes.

25 MR BAKER: Okay. Well, I'll need to talk with Mr Watson about that, just so as we get that tidied up.

DEPUTY PRESIDENT: I think it needs some proviso in there to say - the proviso needs to talk about - provided that, a person who has done this, that and the other thing, shall immediately progress to -

MR BAKER: The adult training, yes.

30 DEPUTY PRESIDENT: Does this also then get into the question of defining an adult apprentice and where does adult apprentice fit in relation to the definition of apprentice?

MR BAKER: On page 15 - I must admit, I didn't turn my attention to it but, clearly, if an adult apprentice -

35 DEPUTY PRESIDENT: I haven't got that here.

MR BAKER: It's on page 15 of the document which I handed to you on the last occasion.

DEPUTY PRESIDENT: I think somehow you've got to - when you talk about apprentice, you've got to have a clause in there that also says, apprentice also means, adult apprentice.

MR BAKER: Yes, and then tie it back in.

DEPUTY PRESIDENT: Especially if you're defining it.

MR BAKER: Yes, and tie it back in again.

DEPUTY PRESIDENT: Because you really mean that an adult apprentice has to really go through the same as a junior apprentice, for the want of a better thing. They've still got to be under a contract of training.

MR BAKER: Yes. I suppose one of the things which has occurred - basically, the provision in this award really only goes to the rate of pay for an adult apprentice. It doesn't actually prescribe any other arrangements other than -

DEPUTY PRESIDENT: Yes, but it begs the question, what is an adult apprentice?

MR BAKER: I understand that, so we need to tie that back into the definition to which Mr Watson is going to provide me with.

DEPUTY PRESIDENT: Yes. All right. The reason I'm a bit interested in all of this is that we've just got to start putting this argument about apprentices to bed. We've got to make sure we come to grips with it somehow even if we do it on an interim basis because some people out there are going to get their fingers burnt and some people may be in a position whereby they, for example, are not indentured and we get into an argument about them - as one of the TCCI advocates keeps running, that they've got a common law apprenticeship and then we get into the argument: what sort of work are they doing? From an employer's point of view, the employer could be up for a level 1, 2, 3, 4, 5, 6, or 7 rate, whatever, based on the work they do as opposed to being an apprentice if we don't define it properly.

MR BAKER: Yes, that's right and it's an ongoing issue about people entering into arrangements and for whatever reason, the contract isn't signed and in some instances, they go on for months and months.

DEPUTY PRESIDENT: Well, we've had some disputes about these things and I think we've just got to - as I say, even if it's a temporary arrangement to fix it up in this award and things like the Metals Award, we've just got to start biting these things off and clean them up.

MR BAKER: I'm not too sure though, sir, how you overcome the issue of where, for whatever reason, the contract doesn't get signed and it sits in limbo.

5 DEPUTY PRESIDENT: Well, if it doesn't get signed, then the employee is entitled to the rate of pay for the job that they're undertaking.

MR BAKER: I don't disagree with you.

DEPUTY PRESIDENT: And that's the big thing for, say, the employer, to make sure that, say, apprentice is clearly defined. Apprentice for the  
10 purpose of this award shall mean XYZ. If it's not covered adequately by the *Training Act*, then let's clearly define it for the purpose of the award and then we will probably have less interpretations going on and we'll have less argument out in the field and it will mean then that those  
15 people that don't comply with the definition, then they'll be forced to pay the rate of pay for the work that's been undertaken because they won't meet the definition for apprentice.

For yourselves, for the employers, for the tribunal, it's going to be a lot easier for all to understand whether one is an apprentice within the meaning of the award, at least.

20 MR BAKER: I'll take those comments on board.

DEPUTY PRESIDENT: We have tried to sort it out in a few other areas where we've got enterprise agreements, where they're clearly defining what an apprentice is for the purpose of the enterprise agreement and also clearly defining what happens when a person  
25 completes the training required. So, it does help clarify this first, second, third and fourth year arrangement.

There may be a need to even, in this area, define what you mean about fourth year of training. Are we talking about four years or are we talking about the subject matters that would normally be dealt with?

30 MR BAKER: Again, you raise an issue which is relevant. There are three years of scholastic training and the fourth year is training on the job, for example, for the light vehicle mechanic which is the motor mechanic. The fourth year is on the job. There's no classroom, unless the student has slipped up somewhere and is doing a bit of additional  
35 work at some stage.

DEPUTY PRESIDENT: Sorry for being the devil's advocate here, but it then begs the question of, who determines that it's four years and the fourth year is on the job training? Does the award?

40 MR BAKER: That's determined by the national training package but there is a conflict in as much as that there is a national training package which says that the student needs to undertake and achieve

the learning outcomes as determined by the package. How the student obtains those qualifications is in fact determined by the provider. In this case, in Tasmania, it's TAFE. So, if TAFE say - and this is where the conflict arises because TAFE are paid for training hours. Those training hours are divided into three or four years. There is this conflict between competency-based training and time-based learning and if you can sort that out -

DEPUTY PRESIDENT: That's why I think you need to - I've made my point, I think, clearly define apprentice for the purpose of the award and length of training and you need to tie the use of adult apprentice back to the award meaning of apprentice.

MR BAKER: Yes. The only other thing I need to make reference to is that I did omit to provide to your associate, a copy of a disc arising out of the last hearing, and I indicated to her last week that I would provide it to her last week, except I overlooked the fact that it was then from our Devonport office and I should have it to her either today or tomorrow and that is in the revised format, as we spoke about this morning with, obviously, those changes to be made to the apprenticeship clauses on pages 14 and 15 and a discussion with the TCCI in relation to the application of the old appendix B which will now form part of the wage rate provisions.

DEPUTY PRESIDENT: That might alter the summary of changes as well, would it, to the award?

MR BAKER: Yes, the whole lot. That concludes my submission.

DEPUTY PRESIDENT: So, I take it that you're seeking the matter be further adjourned?

MR BAKER: Sorry, sir - yes, of course. We would seek either an adjournment until we get these matters sorted out. I presume that's probably the easiest way of sorting it out.

DEPUTY PRESIDENT: Yes. Although I don't want to leave it open-ended because I'm going to be leaving on extended leave at the beginning of April and I would wish to have this finalised before I go away, otherwise it's going to be another few months away.

MR BAKER: And I'll be away the last week of March. That presents to Mr Watson and I to conclude this by next week, as I see it. I don't anticipate there should be too much of a difficulty there. It's really just a question of us working through appendix B which is not a great deal of work and just coming up with an appropriate provision for the apprenticeship provision and Mr Watson provides me with, what he believes to be an all encompassing phrase, then I think we can do that.

DEPUTY PRESIDENT: Good. Mr Watson, I think we should hear from you?

MR WATSON: Thanks, Mr Deputy President. I wasn't actually present at the last hearing but from what I understand, there were a number of matters raised in conference that the parties were to discuss. We haven't actually had the opportunity - perhaps we've had  
5 opportunities but we haven't actually got together today as you've been told by Mr Baker and in fact we didn't actually receive this document until this morning so, obviously, I'll need some time to go through it but in terms of a time frame, I'm just thinking about - perhaps to allow us a bit more time, if there was any time in the first week of April, then  
10 I think we'd be better off to have it listed then rather than by the end of next week because there's a few issues here that we've got to get sorted out, get the document done and then come back. I don't want to be back here again when the matter is not finalised.

DEPUTY PRESIDENT: No, either do I. Monday the 2nd?

15 MR WATSON: That's okay with me. Phil?

MR BAKER: I've got a commitment at 11.00. I could change that.

MR WATSON: Would that be in the morning or in the afternoon?

DEPUTY PRESIDENT: We could bring it on in the afternoon if it would assist.

20 MR WATSON: That's fine with me.

MR BAKER: Okay.

DEPUTY PRESIDENT: 2.15, or something? Would that give you enough time?

MR WATSON: That's fine.

25 MR BAKER: I need to have it finished - my discussions with the TCCI, the week ending 23 March.

DEPUTY PRESIDENT: Yes, ready for the hearing on the 2nd because you're going to be away from the 26th onwards, are you?

MR BAKER: Yes. I actually won't be back in the state until the  
30 Sunday evening, 1 April.

DEPUTY PRESIDENT: The added time is not going to give you a lot of  
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MR WATSON: No, I was just thinking that. Is there any possibility later on that week?

35 DEPUTY PRESIDENT: If there's a hearing room available, we could try and make something on Thursday.

MR WATSON: That's the 5th?

DEPUTY PRESIDENT: Yes.

MR WATSON: I think that's probably better because as we just said -

DEPUTY PRESIDENT: Thursday afternoon then?

5 MR WATSON: Yes. 2.15 on the 5th?

DEPUTY PRESIDENT: Yes.

MR WATSON: Okay. I think that's better.

MR BAKER: Yes.

10 DEPUTY PRESIDENT: We've just got to try and get the disc as soon as we can possibly get it or e-mail it to us.

MR BAKER: It's in the mail. It went in the mail on Thursday, so it ought to be here today so I'll deliver it as soon as it arrives in my office.

DEPUTY PRESIDENT: Then there'll be some changes around the edges.

15 MR WATSON: If it pleases. Have we been on the record or off the record, deputy president.

DEPUTY PRESIDENT: I lost track myself. This matter then will stand adjourned until Thursday 5 April at 2.15pm.