

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 6267 of 1996

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

re variation of Division F by the insertion of
special provisions for persons employed
principally to sell motor vehicles; and
deletion of Division G

PRESIDENT

HOBART, 16 July 1996

TRANSCRIPT OF PROCEEDINGS

Unedited

PRESIDENT: Appearances, please.

MR P. BAKER: Sir, I appear on behalf of the applicant organisation, P. BAKER.

PRESIDENT: Thank you, Mr Baker.

MR J. LONG: If the commission pleases, JEFF LONG and I appear on behalf of the
5 Australian Workers' Union.

PRESIDENT: Thank you, Mr Long.

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

PRESIDENT: Thank you, Mr Noonan.

10 **MR T.J. EDWARDS:** If it please the commission, EDWARDS, T.J. Appearing with me, **MS J. THOMAS** for the TCCI and the Metal Industry Association of Tasmania.

PRESIDENT: Very good. Thanks, Mr Edwards. Mr Baker?

MR BAKER: Sir, before we commence, perhaps I may have missed it but I understood there was also reference in my application to the deletion of Division G.

15 PRESIDENT: Yes.

MR BAKER: Does that appear?

PRESIDENT: Yes, it does.

MR BAKER: I thought I might have sent you a different copy.

20 PRESIDENT: No. It is there. It's up the top of the - in fact, it's the first item. It sort of sits apart from the others. It has a large space after it, and I guess that's why it was missed. It's certainly in the application.

MR BAKER: Good. Thank you.

25 Sir, this application is consistent with the decision of the full bench in yesterday's hearing. This award goes back a number of years as far as a proposal for restructuring is concerned and over the years there've been a number of discussions between ourselves, the TCCI and indeed the Tasmanian Automobile Chamber of Commerce and we set out a couple of years ago and inserted into the award new wage provisions.

30 The existing award is divided into numerous divisions, ranging up to G and indeed each classification or area of work, has its own division and the award has grown like Topsy over the years, or did grow like Topsy over the years, where there was a new category introduced into the award and there was a new division inserted and that has caused, over the years, a number of discrepancies to occur within the award. For example, there were different tool allowances applying to the same employees, but if you were employed in a service station as opposed to a garage, it was a different allowance. Simply because at some stage, somebody forgot to vary that sector of the award and there are other anomalies which occur in the award as well.

35 It's only recently, for example, that rates of pay for females in fact was removed from the sales area. I daresay it was the last award of this commission to actually maintain separate provisions for female employees.

PRESIDENT: Mr Edwards is violently shaking his head on the other side there, Mr Baker.

MR EDWARDS: I can take you to plenty of others.

PRESIDENT: We've got a lot of work ahead of us, by the sound of it.

5 MR BAKER: And of course there are also different penalties applied throughout the award. There are different arrangements. Some people working in the same establishment, for example, get a morning tea break of a Saturday morning and others don't. Why it ever came about is - nobody would know, but they exist and there are other areas, as far as this award is concerned, like division G, which is a provision which relates to the K-Marts. It doesn't say that, but that's what it refers to and yet the K-Marts are covered by the Federal Repair, Services and Retail Award.

10 There was an arrangement entered into between the then TCCI, the old Australasian Society of Engineers and the K-Mart, that they would have a K-Mart provision in the award. Now, it was never legally binding but it has operated for a number of years up until -

15 PRESIDENT: Well, it would have been binding if they hadn't had a federal award.

MR BAKER: Well, that's right.

MR EDWARDS: But it's only a recent change.

MR BAKER: Well, I understood it was a change that goes back some years.

20 PRESIDENT: It might change again shortly.

MR BAKER: Well, I'm not sure. The K-Mart might take a decision that they no longer wish to be bound by the award and in fact have adopted, there is no dependency in full. So Division G is simply superfluous. It doesn't relate to anyone.

25 In Division F, Motor Vehicle Salesmen - this sector of the award, I don't think has been varied for 25 years. There are provisions in there which are really almost beyond the pale.

30 35 In turning to an overview of the award, I have in fact done a rewrite of the whole of the award and that has been circulated to the parties but it provided an enormous task to do it. So, I thought as a preliminary step that we would tidy up some of the things that would appear to be relatively simple and that was, we would get rid of Division G, because it no longer has any application.

Secondly, as far as the motor vehicle salesmen were concerned, we would, if you like, bring that up to date and at the same time, I would in fact do a rewrite of that award to put it in plain English. Well, I managed to put it into plain English, but the TACC have advised me that some of the clauses now - I've actually changed the entire meaning of the clause and I've actually omitted other clauses altogether. So, my attempt at plain English writing -

MR EDWARDS: Was adventurous.

MR BAKER: It was adventurous, thank you, Terry, and it was a bit of a failure.

40 PRESIDENT: So, where is it now?

MR BAKER: I understand, Ms Yilmaz from the TACC has kindly done another draft, but I haven't had the opportunity of viewing that document. In so far as the allowances are concerned and I'm cognizant of the wage fixing principles, we are really left with, as I see it, two alternatives.

- 5 The commission can ask of the parties respondent to the award to prepare a detailed document indicating the movements in motor vehicle allowances and that's really what we're talking about - motor vehicle allowances that have occurred in Hobart for the last 25 years. That may be a relatively easy exercise, or it may be somewhat difficult and very time consuming. Alternatively, the commission can look at the
10 Repair, Services and Retail Award, which is the parent award as far as this area of employment is concerned. It operates equally with and in conjunction with the Automotive Industries Award.

PRESIDENT: What's the name of that award, again?

MR BAKER: The Repair, Services and Retail Award.

- 15 MR EDWARDS: Vehicle Industry Repair -

MR BAKER: Vehicle Industry. It has identical provisions and indeed if you read the vehicle salesmen provisions, you'll find that they are almost identical with that as found in the federal award. There is the same terminologies and the same type of phrasing occurs.

- 20 At the end of the day, a number of the areas which we would be seeking as far as - when we restructure this award, we would in fact be looking to pick up those provisions that operate in the federal award. For example, there are far more flexible working hours and opening hours as far as - for example, service stations, are concerned which do not appear in the state award. I mean - that would be a provision
25 that we would be seeking to sort of flow from that award into the state award, as far as the contract of employment is concerned.

- So, really, this was, if you like, sir, the first effort to do something about the provisions of this award. There are, as I've indicated, some problems with that because of my inability to translate the current award into terms of plain English, but I see that
30 really, if you like, sir, as a secondary step. The real issue I suppose that needs to be addressed is the issue of these allowances, the motor vehicle allowances in particular which haven't moved for in excess of 25 years and the onus of proof that the commission would place on the parties as to whether it would require us to do a CPI adjustment since 1971 or thereabouts, or whether the commission would accept the decisions of the federal commission that have moved the allowances in the federal award which apply to many people in this industry already.
35

PRESIDENT: Okay. Well, look, can you identify those allowances for me in the award, then in addressing your application, take me to each of the provisions in the award, which will help me understand the submission.

- 40 MR BAKER: If we turn to Division F - Conditions for employees in Division F, Motor Vehicle Salesmen.

PRESIDENT: Have you any idea what page that would be?

MR BAKER: My page is 85.

PRESIDENT: Yes, thank you.

MR BAKER: The first of the allowances actually appears under clause 72 which is Meal Allowance and there's three allowances in that clause 72, both (a) and (b) and we would simply seek to increase those allowance in line with the full bench decision in relation to overtime meal allowances.

5 Again, in clause 74, the same thing would apply and in clause 75, the allowances of \$23.80 and \$26.30 would be increased to \$111.25 and \$123.60 respectively.

PRESIDENT: \$111.25 and -?

MR BAKER: \$123.60.

PRESIDENT: Yes, and that's based on what?

10 MR BAKER: That's based on the Consumer Price Index, just calculated through the federal RS & R Award and that's what those allowances currently are in the federal award.

PRESIDENT: Okay. You've not done any calculations based on CPI, or movements since the last review?

15 MR BAKER: No, sir. That's why I've indicated, as to whether or not you would require us, through the principles to, if you like, say to us, well, I want you to calculate each year since 1971 or alternatively, take the datum point in the federal award, which would have been at or the same figure at the time and simply pick it up today, to say, well, that's moved over the years in accordance with the CPI adjustments and that's where it is.

PRESIDENT: Yes, well as a general rule, we've worked on the latter basis in this - this commission. I'm not too aware of other awards where we've automatically picked up those with - federal movements without a substantial degree of consent.

25 MR BAKER: Well I hope there - hope there will be at the end of the day. As I've said some discussions with the TACC in relation to the allowances. I haven't had the opportunity of talking to the TCCI as far as they are concerned. It would be my intent following today's proceedings that there be some discussions with the TCCI concerning the quantum of the allowance -

PRESIDENT: Yes.

30 MR BAKER: - and the document which I have written and which has been rewritten by Ms Yilmaz from the TACC be the base of the - of discussions between us.

PRESIDENT: All right. Yes. I think that's a good idea. So that's the allowances in Division F.

MR BAKER: Yes.

35 PRESIDENT: Is that all?

MR BAKER: That's it. That's the application -

PRESIDENT: That's it?

MR BAKER: - for today.

PRESIDENT: That's - so we've got to delete Division G -

MR BAKER: 'G' - and -

PRESIDENT: Do we deal with the Division F allowances, and what about the other three provisions?

5 MR BAKER: And the other three will follow - that's my next effort. Hopefully I'll be more successful at translating those into a single document. But, sir, as I've indicated, there is some - there are some problems with the other three sections of the award - or four sections of the award because of the different provisions that apply to different categories of employees. And I'm not too sure how we're going to overcome that at the end of the day.

10 PRESIDENT: Yes. Yes, all right. Thank you for that. Now if you'll just bear with me for a moment, I have a fax from TACC. Ms Yilmaz has asked if the following could be noted for the record, so I'll read it out: 1) The TACC supports the removal of Division G as the parties to that section are covered by a federal award. 2) A draft order for the variation is proposed by AMWU for the - for allowances in Division F is forwarded. 15 They have not been varied for some years. The variation is supported by the TACC. In addition, a draft order removes the sexist language of salesman to salesperson. And 3), the draft order also removes the casual use allowance per horse power of the vehicle and shows a simplified allowance of 44 cents regardless of horsepower.

Have you sighted - have any other parties sighted this document?

20 MR BAKER: I've received it this morning, Mr President, and that's why I've indicated that we should use it perhaps as a document between the parties for discussion.

PRESIDENT: Yes. Can you make a copy of that available?

MR BAKER: Yes, sir.

PRESIDENT: Yes. Well I think we'll go off the record again.

25 PRESIDENT: Oh, before we do, Mr Edwards, do you want to say anything at this stage or not, whether -

30 MR EDWARDS: Before we go off the record that you've indicated we'll do, president, I'd simply observe that the TCCI, on Mr Baker's own submission, hasn't been consulted in respect of this application. I will therefore be seeking an adjournment of longer than just five minutes this morning. I do in fact have other proceedings before the commission this morning.

PRESIDENT: No, you can rest easy, Mr -

MR BAKER: I wasn't suggesting that we wack it through this morning, Terry.

35 MR EDWARDS: Well, I mean, these things would be a lot easier, Mr President, frankly if their consultations could take place before the application was made, which was made on the 24th June. And Mr Baker indicated in his submission just a moment ago that he hasn't had an opportunity to consult with TCCI. I don't know how much opportunity he requires. I'm frankly getting very frustrated with having to continually make this submission in this commission. It is really getting beyond the pale, and 40 frankly, Mr Baker would have to be one of the worst culprits. He does this continuously; he comes before the commission and invariably these matters are adjourned and the parties go away to discuss them anyway. We make ourselves available for these discussions when we're requested to have them, and frankly, if we're not requested then we're just going to come before the commission and ask for 45 adjournments -

PRESIDENT: Yes.

MR EDWARDS: - time and time and time again.

PRESIDENT: Yes.

MR EDWARDS: And frankly it is getting ridiculous, sir.

5 PRESIDENT: Yes.

MR BAKER: With due respect to Mr Edwards, he's had the draft order in one form or another for over two years.

10 PRESIDENT: Yes, look, I understand your frustration, Mr Edwards, but please don't make it sound to me that TCCI never makes the same mistake because it does happen, and we've had a number of examples of that in very recent times where discussions occur with just a couple of the parties or one of the parties and not all of the parties.

15 However, put it aside, I understand the problem and I urge people to make sure that when they make application, or indeed before they make application they discuss the issue with the affected parties. I've said it so many times before, I'll say it again, everybody please take note of it.

Mr Long and Mr Noonan, I missed you out in asking you what your points of view might be in relation to the application; have you got anything you want to add?

20 MR LONG: Well, no, sir, simply that our organisation would support the submission of Mr Baker's and really I've got nothing further to add.

PRESIDENT: Yes, all right. Thanks for that. Mr Noonan?

MR NOONAN: Mr President, no, I have no problem with the deletion of Division G and support the updating of the allowances.

PRESIDENT: Yes, all right, thanks. Mr Edwards?

25 MR EDWARDS: Yes, thank you, president. There are a couple of issues I'd like to briefly touch on. In general terms, TCCI have no objection to the deletion of Division G.

PRESIDENT: A ha.

30 MR EDWARDS: We are aware that the K Mart have moved their award coverage over the last couple of years from state award coverage to federal award coverage and we would have no objection to the removal of Division G from the award. It would be completely consistent with our application to the full bench in the State Wage Case proceedings.

PRESIDENT: Yes. Quite.

35 MR EDWARDS: In respect of some of the other issues that fell from Mr Baker, I won't go to them in detail, suffice to say I was personally involved in placing the motor vehicle sales people classifications and conditions into the Automotive Industries Award. I've only been at TCCI - or TCI as it then was - for 15 years, so Mr Baker's submission about 25 years would appear to contain some degree of embellishment.

40 Frankly a little bit of exaggeration it appears goes a hell of a long way sometimes.

We're prepared to enter into discussions with the AMWU and other unions party to this award in the context of updating conditions. Whether it should be on the basis of just those contained in Division F or elsewhere is a matter that we can talk about.

PRESIDENT: Mm.

5 MR EDWARDS: But certainly the application of Mr Baker as he has explained it this morning is not the same as the one that was received by me by way of T.6267 of 1996. 6267 of 1996 seeks the total deletion of Division F and substituting in lieu of all the things that previously were contained in that division, whole new sets of provisions, and Mr Baker didn't take you, for example in his draft and I've looked at this very 10 quickly this morning, at A23, for example, just on the first page of the detailed provisions within the application, where all of a sudden, we've got the inclusion of things that don't even exist in the award, like jury service and make-up pay, not a feature of Tasmanian awards.

15 Mr Baker didn't take us to those things this morning. Is he trying to get them through by subterfuge, or has he simply omitted to talk about them? If we had the discussions, these things could have been avoided and I can go on and on and on, Mr President. These things are consistent right through the entire document, where new provisions have been incorporated with no discussions between the parties and all Mr Baker tells the commission this morning is, he wants to update a couple of allowances in a very 20 simplistic way - makes it sound very nice and innocent and simple but of course the reality is, when these things aren't discussed they are far from simple.

PRESIDENT: Well, that's the purpose of the conference and you'll certainly sort it out.

MR EDWARDS: And it's very, very complicated in fact.

25 PRESIDENT: All right.

MR EDWARDS: We would therefore be saying that we will need time to consider the application and to have negotiations with the relevant parties before we're in a position to make any submissions to whether or not the new provisions incorporated into the award are appropriate in the circumstances. If it please the commission.

30 PRESIDENT: Very good. All right. Thanks, Mr Edwards. When do the parties think we might be in a position to resume? What sort of time period? A month?

MR BAKER: Well, this award has been under review now for about three years, so I don't suppose a month would hurt.

35 PRESIDENT: No. I think it's a fairly - it requires a fair bit of work, so I would say a month as a minimum.

MR EDWARDS: Well, before I could go to that in any detail, I'd perhaps need to sight the new draft simple-English rewrite of the award. It would seem appropriate if we are going to deal with these issues of updating the award, that we try and do it in a coordinated way and not in a piecemeal manner which would be the result of a 40 current application.

PRESIDENT: Yes. I don't think we're going to get it right all at once, of course.

45 MR EDWARDS: Possibly not but I'm given to understand by Mr Baker's submission this morning that there is a simple award rewrite available. If that's the case, then we certainly haven't seen it. We would like to because we'd like to make comment on it as well.

PRESIDENT: I'm sure you'll get it pretty quickly.

MR EDWARDS: If that arrives at a fairly early date, then maybe a month is appropriate. There's one thing I did omit to mention when I was on my feet before, Mr President, and that's in respect of Mr Baker's claim on meal allowances. As far as I am aware, the Automotive Industries Award was one of those that was updated by application of the AWU before a full bench of this commission and currently contains the figure \$9.25.

PRESIDENT: It doesn't appear to.

MR EDWARDS: An amount considerably in advance of the federal parent award to which Mr Baker has referred us by way of nexus this morning, I might briefly add.

PRESIDENT: Yes. I thought that would have been the case too, Mr Edwards, but I was just going through the - I was actually referring to the most recent document which is 1996 Consolidation.

MR BAKER: I think it only refers, from memory, to the -

15 PRESIDENT: It seems to have omitted -

MR BAKER: Vehicle salesmen.

MR EDWARDS: Well, certainly in so far as our advice to our members, we have advised them that the award was varied by varying those allowances to \$9.25.

PRESIDENT: Well, it doesn't appear in the award -

20 MR EDWARDS: It's obviously a drafting error within the commission, I'd suggest, quite boldly.

PRESIDENT: Yes. I think it might have been a drafting error with the agreed order.

MR EDWARDS:

PRESIDENT: No, it wasn't either. You're quite right.

25 MR EDWARDS: There was no way it was agreed.

PRESIDENT: Sorry. I think there were a couple of exceptions.

MR EDWARDS: We did make the commission aware of some concerns -

PRESIDENT: We only varied -

MR EDWARDS: - we had with some of the orders but we were -

30 PRESIDENT: Yes. You kept right out of it.

MR EDWARDS: - effectively told to mind our own business, so we did.

PRESIDENT: Yes. Quite properly, too. Yes, I think what happened was that the commission only varied those provisions which were submitted to it during the course of proceedings.

35 All right. So, whether or not it was varied, it ought have been, Mr Edwards, is that what you're saying?

MR EDWARDS: The application now is to vary it.

PRESIDENT: Okay.

MR EDWARDS: I guess the loss to the union will be the operative date.

PRESIDENT: Yes. All right, well, we'll set down a report-back for a month. How are
5 we looking in a month's time? Tuesday 13 August.

MR EDWARDS: I'm not available at all in that week. I'm away on a training course.

PRESIDENT: Okay. I don't think the following week is going to cause too much trouble. August 20th?

MR BAKER: Thank you.

10 MR EDWARDS: That's fine by me.

PRESIDENT: Very good. Okay. I'll adjourn all the parties into conference formally, to work towards, a) dealing with the application that's before us and, b) looking at a complete rework of the award in due course, into plain English and we'll meet again for a report-back on August 20. We'll make it 9.30 again.

15 **HEARING ADJOURNED**