

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2316 of 1990

IN THE MATTER OF an application
by the Association of Draughting,
Supervisory and Technical
Employees, Tasmania Branch to vary
the Surveyors (Private Industry)
Award

re initiation of a program to
restructure the award

COMMISSIONER GOZZI

Hobart, 24 June 1991
continued from 16/4/91

TRANSCRIPT OF PROCEEDINGS

unedited

COMMISSIONER GOZZI: Any changes in appearances?

MR S. CLUES: Yes, Mr Commissioner, I appear on behalf of the Tasmanian Confederation of Industries, CLUES S.

COMMISSIONER GOZZI: Thank you, Mr Clues. Now, the matter was adjourned, wasn't it, to today's date, dealing with the issue of the appropriate classification structure for this award. Can somebody fill me in as to what's happened?

MR BAKER: Thank you, sir. Following the last round of discussions, or non-discussions might be a more appropriate phrase to use, we undertook to do some quite serious work as far as this award was concerned, because there had been some delays which had occurred in the process of, firstly, the development of the new classification structure and, secondly, following a request from the employers, to which we agreed, on slowing down the introduction of the minimum rates adjustments principles.

You may or may not be aware, sir, that as far as the other awards to which MEWU is respondent, we have commenced the minimum rates adjustment principles in all those awards. The only exception is the Surveyors Award, and that was done on the - following some discussions from Mr Abey and representatives of the Australian Consulting Surveyors Association last year, as to their financial plight at that time.

And following that request we delayed the introduction of the MRA. However, we did give some very clear indication to both Mr Abey and to the Surveyors Association that we would be seeking the inclusion of the MOA by June of this year, because the other awards to which the organisation is a respondent have now had their second minimum rates adjustment and are coming up to the third in August-September of this year.

The other thing which is of concern to us is the classification structure, which was always of a concern to us from the inception of the award. But we viewed it on the basis that when the award was first created that it would provide the opportunity for award coverage and that the opportunity would arise for us to give due consideration to the creation of a proper structure. And to that end the issue of award restructuring would provide us with that necessary arrangement.

We have - and I don't think it's any secret, sir, that this award has sort of over the years followed what has happened principally elsewhere in Australia as far as the structure itself is concerned, and last year in 1990 there were considerable discussions between our Victorian branch of the then ADSTE and the Consulting Surveyors Association of Victoria.

And towards the end of 1990 agreement was reached concerning the introduction of a new salary structure. That salary structure formed the basis of documentation which I forwarded to the TCI, and to the Consulting Surveyors Association, together with an update of the award. Now, the update of the award, sir, hasn't taken place, but what we've organised is to forward to the employers a copy of the document for modernisation - for the want of a better terminology. And I would hand up to you, sir, a copy of that to indicate to you just where we've got to as far as that's concerned.

COMMISSIONER GOZZI: Right. I'm not quite sure where we are, Mr Baker. ADSTE - well, we'll call it MEWU.1.

MR BAKER: Yes. I've got a '3' here so I'm not sure.

COMMISSIONER GOZZI: Oh, MEWU, have you?

MR BAKER: No, an ADSTE.3.

COMMISSIONER GOZZI: Yes. Well, I think if we start off with MEWU -

MR BAKER: One.

COMMISSIONER GOZZI: - 1, yes.

MR BAKER: Right. The documentation, sir, is simply a copy of the pre-existing award, which we were going to use for the basis of our discussions.

Secondly, concerning in that, if you, sir, turn to clause 7 on page 2, which is definitions, and then there is the outline, sir, of the classification structure, which goes - which ranges from levels 12 through to 1 (excuse me, sir) which consists of an unskilled employee at 82% of the technical assistant - survey rate at level 10, ranging through to the business manager or specialist at level 1 at some 210%. And there's various training requirements etc which are outlined there.

And then, sir, on page 4, we commence the definitions. At level 12, for example:

An unskilled person is an employee who holds no relevant qualifications but is capable of assisting the surveyor or survey technician.

Their duties would include:

- * Assisting in field work under direct supervision.
- * Be aware of safe working practices.

- * Be eligible to or hold a drivers license.
- * Be able to maintain and clean basic survey equipment.
- * Be able to perform general office duties under instruction.
- * Be able to work in a team environment.

And then, sir, it goes through - right through to level 1, which is at the top of page 11. It talks about the business manager/specialist, which is the phraseology which was taken out. And indicates there that you require:

1. A 3 or 4 degree to qualify as a Professional Surveyor, or;
2. An employee who had completed accredited education and training so as to reach a standard equivalent to a three or four year degree and who is required to perform the work set out below.

And then if you look at the duties as listed there on the bottom of page 11:

An employee at this level is required to perform professional surveying work involving considerable independence in approach and demanding a considerable degree of originality, ingenuity and judgement. The occupant requires knowledge of more than one field of surveying or is an expert in a particular field of surveying. The occupant initiates and/or participates in short and long range planning and makes independent decisions on surveying policies and procedures within an overall program.

And then, sir, it goes on to list the type of recommendations and decisions, any supervision received or exercised. And it spells it out, that a person at that level is a senior person within the company.

So those were the definitions, sir, that went out to the employer together with the document which we could sort of engage ourselves with in modernising. And on top of that, which I haven't got with me, sir, I was unable to pull it out of the word processing machine this morning, due to my lack of understanding of such equipment, that we have - I have prepared a salary structure based on the 82 to 210% level, coupled with an appropriate minimum rates adjustment schedule.

Now, I'm not too sure whether in fact I've sent a copy of that to the TCI or not. I can't - I'm not sure, I can't recall. However, having proceeded along all that path and got everything organised and so on, I then received correspondence from Mr Abey, from the TCI, indicating that due to our position adopted in so far as the National Wage Case decision was concerned, that he would not be proceeding to have any negotiations with the union while threats or implied threats of industrial action would be taking place at a national level concerning this award or the Architects Award, which is the subject of further discussions between Mr and myself. Clues, I'm sorry.

And so, sir, we are now at a position or an impasse, if you may like, that - that the work has been done, our members are being disadvantaged by the non-implementation of the minimum rates adjustments, an agreement which we entered into with the TCI in so far as the delay was concerned.

And you know I'm somewhat sort of taken back by the fact that having agreed to the deferral of some 7 or 8 months now, that we're now told by the TCI that because the industrial action is proceedings in so far as the Metal Industry Award is concerned in this state, that all other employees, particularly those in this industry who have already made a contribution - an additional contribution - in so far as wage restraint is concerned are to be disadvantaged by the intransigence of the TCI and the ACSA.

I am somewhat taken aback by that, but nevertheless, sir, that's where the position is at the present time. That there is a document that is available to be negotiated. The minimum rates schedule has been prepared. And obviously, sir, it can't be introduced at this stage because there's nothing to introduce it on.

And while as the definitions may or may not be exact they do require some firming up. There are references to bridging courses which may or may not be available through the TAFE, and they will need to be addressed. There's also the question of the introduction of the advanced certificate. While it appears in this award and it does appear, in fact, in other awards of this commission, there is no such course available this year at the TAFE. It won't be introduced until 1993. So that - I'm sorry, 1992, I've lost a year. So that needs to be examined as well. So I suppose, sir, that's where we're at at the present time.

COMMISSIONER GOZZI: Thank you, Mr Baker. Mr Baker, just to clear up a couple of minor matters. It's the Consulting Surveyors Association of Australia or Victoria?

MR BAKER: Of Australia.

COMMISSIONER GOZZI: Of Australia.

MR BAKER: Yes. I think it's the Tasmanian chapter, isn't it, Stuart? Yes. The Tasmanian chapter.

COMMISSIONER GOZZI: So you had discussions with the Tasmanian chapter of the Consulting and Surveyors Association of Australia.

MR BAKER: Oh yes, Mr Medbury.

COMMISSIONER GOZZI: The Tasmanian Chapter.

MR BAKER: I understand he's the secretary? President?

COMMISSIONER GOZZI: Oh, it doesn't matter. I just wanted to clear that up.

MR BAKER: Yes. No. 1.

COMMISSIONER GOZZI: Yes. Now, the - just briefly looking at your definitions, if you go to page 12, you've got professional surveyor - graduate. You see that down there?

MR BAKER: Yes.

COMMISSIONER GOZZI: Page 12. What's the clause 3 reference for a start off?

MR BAKER: I just did make a comment that I didn't think they were perfect, sir.

COMMISSIONER GOZZI: Yes. I mean, are you saying that this will still have to be tidied up? This is the basis of the discussion?

MR BAKER: Yes.

COMMISSIONER GOZZI: Yes. Right. It's not something that you want me to take note of apart from information.

MR BAKER: Well, I want - well, as far as I'm concerned, sir, apart from some minor word phrasing, like or bridging courses -

COMMISSIONER GOZZI: Yes.

MR BAKER: - these are the definitions that we'll be seeking to go into the award.

COMMISSIONER GOZZI: Yes. Certainly. But you still want to tidy it up between you?

MR BAKER: Yes. There's - in so far as there is concern -

COMMISSIONER GOZZI: I'm quite happy to accept it as - for my information to let me know where you're at, but not as a final document because -

MR BAKER: Yes.

COMMISSIONER GOZZI: - there are some other aspects that I could follow up with you. Say, for instance, in respect of that clause 3 - Professional Surveyor - Graduate, that isn't a classification that's set out in - on page 3.

MR BAKER: Yes. I think, sir, there's a line missing off there. I think it relates to qualifications.

COMMISSIONER GOZZI: Yes. You see -

MR BAKER: And I'm not - yes, there's a - as I said, it relates to the classification. Like it goes on in (b) where it sort of shows where people sort of come into the actual structure. And in clause 4, where the hell that relates to, does the same thing as well.

COMMISSIONER GOZZI: Well look, let me just say that those aspects of it -

MR BAKER: Yes.

COMMISSIONER GOZZI: - probably need to be tidied up.

MR BAKER: Well, that's right, sir.

COMMISSIONER GOZZI: Yes.

MR BAKER: And obviously had the negotiations occurred we would have finalised that position.

COMMISSIONER GOZZI: All right. Now, exhibit MEWU.1, I'm going to note that as for my information to indicate the sorts of modifications you want to make to the award, but it still has to be finalised in the context of your discussions with the employer.

MR BAKER: Yes, sir.

COMMISSIONER GOZZI: All right. All right, thank you, Mr Baker. Mr Clues?

MR CLUES: Mr Commissioner, the application before you today seeks to implement a completely revised classification and career structure into the Surveyors Award. The implications of the new structure concern both the TCI and the members which we represent, both on technical grounds and also in relation to industrial principles.

Upon conclusion of this hearing today we will be requesting an adjournment to discuss the proposed classification structure with the MEWU, and also to await the outcome or commitment from the MEWU to ongoing no extra claims commitment under the state system. I would like to take you to some of the technical problems that the TCI has, and in some detail, with the new proposed structure.

Now, the new structure has been taken from a Victorian award which is known as the State Lands Surveyors Award.

COMMISSIONER GOZZI: I'm sorry, what award?

MR CLUES: It's taken from the Victorian Award, you'll have to excuse me, Mr Commissioner.

COMMISSIONER GOZZI: No, that's fine.

MR CLUES: Known as the State Lands Surveyors Award.

COMMISSIONER GOZZI: Lands?

MR CLUES: Surveyors Award.

COMMISSIONER GOZZI: Thank you.

MR CLUES: And that's had, we believe, little consideration for the implications that it may have within this state. For example, if I may take you to page 3 of MEWU.1, if you look at level 7 under the column 'Minimum Training Requirement', references -

COMMISSIONER GOZZI: On page 3?

MR CLUES: Yes, page 3.

COMMISSIONER GOZZI: Oh, yes. Yes, I've got it.

MR CLUES: Yes. If I can address the commission's attention to level 7, the minimum training requirement there in order to achieve level 7 and a relativity of 130% is the attainment of an advanced certificate. Currently that advance certificate does not exist within the education infrastructure in Tasmania. It does exist in Victoria, but it does not exist in Tasmania.

If it were to be run it would be run by the Hobart Technical College, as in Victoria it's run by an equivalent body. But at this point in time that certificate does not exist and therefore level 7 - no-one could attain that level under the current structure if it was to be implemented, because it doesn't have the infrastructure in order for people to attain it.

COMMISSIONER GOZZI: Don't you normally overcome that by stating in the award in the appropriate place 'or equivalent'?

MR CLUES: Well, the point is, Mr Commissioner, that this is based on a structure that exists in Victoria, that we don't current have. And it seems somewhat superfluous to put in a structure that doesn't have relevance or doesn't have the support within the educational system at this point in time.

As Mr Baker has said, that may well be addressed in the future but we're asking - the application is asking the commission to implement it now and we don't believe that's appropriate given it's based on an award and on an infrastructure that doesn't exist here.

The - that problem carries on to level 8, where it again cites the certificate and says, substantial progress towards an advanced certificate and we'd ask the question also there as to what substantial progress indicates, and I believe more discussion is required in relation to that as again it jumps up - level 8 - there's a 5 per cent relativity there and I mean you have to define what substantial progress means in order to obtain a 5 per cent wage increase one would think.

The other point is that level 10 cites a minimum requirement as a bridging course again which the Hobart Technical College does not offer, nor does any educational institution within Tasmania, but is available in Victoria from which, as I stated, this is obviously derived.

The industry has other problems. It would like to see this award being an all-embracing award covering drafting and technical staff which it has long envisaged and that principle of having an all-embracing award is definitely supported by wage fixation principles in which it states that one of the purposes of restructuring is to rationalise the number of awards that are covered by any one employing body, and clearly that's not the intention here, it's - if anything, it's not broadbanding, it's reducing and specialising it and relating it to we'd like to see a more embracing structure which covers your drafting and technical staff as they are engaged in this industry.

Clearly there is a lot of work to be done on the structure, and for Mr Baker to say that the work is being done and his members are being denied the wage increase - we don't believe that is truly representative of the situation. Whilst this may form a basis of a structure we believe there is a large degree of technical problems that need to be addressed and we'd need to address those if we are serious about the restructuring process and implementing a structure that we're to live with for the next decade.

We also stated at the beginning of my opening address that we had some problems 'in principle' in relation to this application. The Surveyors Award has a clause in it under the date of operation in which a commitment has been given that the union will not pursue award or over award payments.

The MEWU has breached this commitment by actively pursuing what is commonly referred to as Accord Mark VI claim which is in effect an over award claim because it's outside the industrial system in which we're currently giving our submissions. The MEWU is pursuing this on behalf of all its members and that includes members engaged within the scope of the Surveyors Award and this was supported by a stop work meeting called by the MEWU across this entire state.

Hobart it was on 15 May at 9.30, Launceston it was 15 May at 3.00 p.m. and Burnie it was on 16 May 1991. And the notification that went out was for all members to attend in support of and discussion of the Wage Fixation Principles which has been publicised that the MEWU along with other associated metal workers unions have rejected the Wage Fixation Principles and are pursuing an over award claim known as Accord Mark VI.

Now the TCI does not see itself as reneging on any agreement or trying to delay the process. However, we do not believe that it is equitable to pursue claims for minimum rate increases which are substantial which exists within their system or including a breach upon which wages are available for an over award payment.

This is consistent with the attitude the TCI has taken in a number of awards. I am not sure if it has been before this commission as currently constituted but I, myself, have pursued the same claim before other members of this commission.

Given the breach, the TCI is not prepared to compliment this structure, furthermore we believe - I've addressed - I brought to the commission's attention a number of technical problems which need to be addressed before we believe this structure could be implemented.

On this basis, Mr Commissioner, we would ask the commission to grant an adjournment until such time as the parties have resolved the issues that I've brought to your attention this morning. Subject to any questions the commission may have, I've nothing further to state.

COMMISSIONER GOZZI: No, thank you, Mr Clues. Mr Baker?

MR BAKER: Well perhaps if I deal with the easy one to start with. In so far as the technical problems with the order are concerned I don't discredit Mr Clues. We're aware of those

problems - they were there when the document was handed to his organisation in eighteen ninety - sorry 1990. In so far as the advanced certificate is concerned there are already awards of this commission that have such a qualification in them.

I've made the point that that qualification does not exist in this state at the present time. It will not be available until 1991 at the earliest. However, there was also a provision (excuse me) which goes - which has now been or will be inserted into awards as they're updated and that is that the advance certificate equates to 12 40-hour modules of the associate diploma course. And that will be inserted into awards as and when they come up to the commission as far as the restructuring is concerned.

But as I indicated, sir, and as far as the drafting and tech. grade staff is concerned, I must apologise, that's an oversight on my part; that those definitions are not included, particularly as far as the drafting classifications are concerned, that they are not in fact incorporated into the award as they already exist there at the present time. And that, sir, is an oversight on my part.

COMMISSIONER GOZZI: So you've got no problem with those classifications being in there?

MR BAKER: Not at all, sir. And I think as far as the surveying classification, that is the technical classifications are concerned, I would suggest, sir, that they are encompassed in the new definitions. They were never in the old award, they were there in a - you know, there was, for example, a mining surveyor which in fact was a technical officer with an associate diploma in mining and surveying.

But those definitions were never terribly clear and certainly, as I indicated in my opening address, they needed some form of tidying up. But that can be attended to. In so far as the situation of Accord Mark VI is concerned, we are no different than any other trade union that is an affiliate of the ACTU. There was a national unions' conference decision taken which was a unanimous decision of all the ACTUs affiliates to proceed with the implementation of Accord Mark VI.

In so far as - the situation as far as state awards are concerned, to my knowledge there is no - there are no outstanding claims on employers other than the general claim which is made through the ACTU. And that is, as I said, sir, that is our consistent position that was adopted by the MEWU together with the other 300-odd affiliates of the ACTU.

My only comments in so far as our membership was concerned, as far as this award is concerned, is that we had the necessary information available last November when this award

was varied for the 3 per cent. The information as far as the structure was concerned was there. We made a conscious decision in so far as the deferral of the minimum rates adjustment was concerned, and we've left that now for some 7 months. And it was done on the understanding at the time that those questions would be addressed.

Now, I think over the years that this award has been in existence we've been - we've had a very good working relationship both with the TCI and the ACSA and we would like that to continue. And I feel, sir, that there ought to be some directive of this commission give that those negotiations be concluded, because I just don't think that it can sort of drag on forever and a day. And it's the only award to which organisations are respondent that hasn't been addressed in so far as award restructuring is concerned.

COMMISSIONER GOZZI: All right. Thank you, Mr Baker. Let me give you my view on the issues that are before you, and I'll deal with the issue of principle first. I agree with Mr Clues that in so far as the no extra claim commitment is concerned in the award, from what has been said to me here this morning it's clear that that has been breached. And that alone would justify the commission not continuing with these proceedings.

In fact, if I was asked to do that till such time as it was sorted out between the parties I would do that. I make my comments having regard to the fact that this issue - the no extra claims commitment - has been canvassed in the commission on a number of occasions now, both formally and informally. In formal proceedings I indicated to the parties that the TCI and the Trades and Labor Council should get together and have some discussions with the commission, which in fact eventuated.

And it's my understanding that the arrangements entered into contemplated that things would carry on as normal providing that the no extra claims commitment was not breached; and demonstrably not breached. In circumstances where it was demonstrably breached then the commission would not proceed. Now, as far as I'm concerned in this area here it's quite clear that the no extra claims commitment has been breached in the context of over award payments being pursued outside the system.

My view is that if the organisations involved pursuing Accord Mark VI want to do that then they have to change the system, and I believe that is currently under way in another proceedings reviewing the state wage fixing principles. And until such time as the principles have been reviewed and the system has changed then Accord Mark VI claims are contrary to the wage fixing principles and they are contrary to the no claims commitment.

Now, in respect of the technical matters it would be easy I think for people - for the employer to take what I've said on board and not seek to do anything in respect of this particular award. I don't gain the impression from Mr Clues that that's what he has in mind, and I don't think he's asking me for some directive that no further negotiations take place. I think quite the converse: he's asking for an adjournment so that the parties collectively can sort out the problems.

And in that regard, Mr Baker, I intend to give my weight to that proposal. Clearly it needs to be sorted out. I just make the final point, that if it is able to be sorted out and these so-called wider impediments going to Accord Mark VI are still there, then the commission itself will have a problem dealing with the matter, unless of course the wage discussions that are going on allow the matter to be dealt with in the new framework.

But under the existing framework my strong view is that Accord Mark VI claims demonstrably pursued in the context of over award payments or whatever constitute a breach of that, of the principles and the no extra claims commitment.

We'll go off the record, if you like, and set a future date for hearing, but I qualify it the way that I have.

OFF THE RECORD

COMMISSIONER GOZZI: Thank you, gentlemen. These proceedings are adjourned to August the 22nd, at 10.30 a.m. in the morning. Thank you.

HEARING ADJOURNED