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TRANSCRIPT OF PROCEEDINGS

O/N 9371

TASMANIAN INDUSTRIAL COMMISSION

DEPUTY PRESIDENT R.J. WATLING

T No 10799 of 2003

PASMINCO HOBART SMELTER ENTERPRISE AWARD

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Australian Workers Union, Tasmania Branch
to vary the above award re rates of pay and
work-related allowances**

HOBART

10.30 AM, MONDAY, 28 APRIL 2003

HEARING COMMENCED

[10.30am]

PN1

MR R. FLANAGAN: I appear on behalf of the Australian Workers' Union, Tasmania Branch.

PN2

MR M. REEVES: I appear on behalf of the CFMEU, Tasmania Branch.

PN3

MR W. FITZGERALD: I appear on behalf of Pasminco Hobart Smelter.

PN4

THE DEPUTY PRESIDENT: Good, thank you. Now, have we had pre-hearing discussions in respect of this application Mr Flanagan?

PN5

MR FLANAGAN: Yes, I am in the position to advise that the matter can go forward by consent. In terms of the schedule attached to the application, there are in fact two errors in the schedule which I seek leave to amend and they are in fact - - -

PN6

THE DEPUTY PRESIDENT: Are you going to tender a new document, a new draft order?

PN7

MR FLANAGAN: I don't need to I don't believe, Deputy President. We are seeking to vary the award in terms of the schedule of variation attached to the application.

PN8

THE DEPUTY PRESIDENT: Is that the draft order that is attached?

PN9

MR FLANAGAN: That is correct, yes. So what that does is vary the award in respect of service and experience payment, also in respect of wage rates, then following that shift allowance, direct deposit allowance and A grade allowance and special rates. And we are seeking that the variation take effect from either today's date or the first full pay period on or after today's date given that the employees actually work under an agreement, the award's operative date will be of no effect, in fact. But attached to the schedule variation there is also a schedule of calculation and on the first page of that there is a referencing error. If I can take the Commission to the first page of the schedule of calculation.

PN10

THE DEPUTY PRESIDENT: Yes.

PN11

MR FLANAGAN: Under the heading Division 1 Trade/Technical Persons. If I can take you down to the heading 1999 State Wage Case.

PN12

THE DEPUTY PRESIDENT: Yes.

PN13

MR FLANAGAN: It refers there to T3166 of '91, that should in fact be T8413 of 1999. And under the next column under the heading 2000 State Wage Case again the reference is wrong, it should be T9062 of 2000. Now, other than that in fact the calculations in the schedule of variation are correct. So if I can simply put this to you, Deputy President, as you are aware from recent matters which are before you, there are some awards which have not received safety net adjustments from time to time, and this is one such award. The award is a safety net award as the work force, as I have indicated, actually works under a section 55 agreement and that does regulate the employment.

PN14

So the effect of the application which is before you is to increase rates of pay and work related allowances, but it will not in fact have any cost impact for this employer and the effect of the variations sought by the union will not have any flow on potential to any other award of this Commission. If I can take you very briefly, Commissioner - Deputy President, through the schedule of calculations. It starts in 1991 with the 2 1/2 per cent increase. At that stage the State Wage Case provided for either 2 1/2 per cent or \$10. It then flows on the \$8 safety net adjustments which apply to all rates of pay from the '93, '94 and '96 State Wage Cases. Likewise in 1997 there was a \$10 increase in all rates of pay which has been applied.

PN15

In 1998 the State Wage Case provided for an increase of \$14 for rates up to and including \$550 and an increase of \$12 for rates above \$550 and up to and including \$700 per week, and an increase of \$10 for rates above \$700 per week. And you will see that the rates apply under that 1998 heading are consistent with that. Then in 1999 the State Wage Case provided for a \$12 increase in rates for award wage rates of up to and including \$510 per week and \$10 for rates above \$510. And again you will see that given that there was only one rate there which was in fact below the \$512 which was the grade 1 in production, so they got the - I am sorry, the grade 1 in division 1 and the rest got the \$10.

PN16

Then in 2001 the State Wage Case provided for an increase in rates of \$13 for wages up to \$490 per week, \$15 for wages over \$490 and up to \$590 and \$17 for wages over \$590. Again those - consistent with those requirements the relevant amounts have been inserted for each classification. And that methodology is then flowed through on the second page which deals with the production service persons. The work related allowances are varied to reflect the percentage movement which arises from those respective safety net adjustments and it is the work related allowances only that the union has sought to vary. And you will see that the percentages are laid out there for each of the allowances, the service increments, the shift allowance, the direct deposit, the A grade licence and the special rates.

PN17

So given that the matter is by consent we would simply indicate to the Deputy President that the variations are consistent with the State Wage Cases from time to time. They do not offend the public interest and in those circumstances the parties by consent would seek that the Commission approved the variation in the terms of the attached schedule of variation, the draft order to the application as varied today. If it pleases the Commission.

PN18

THE DEPUTY PRESIDENT: Good. Just one question, what is the significance of the supplementary payments now given that you have been through this process and why is it highlighted in a special column?

PN19

MR FLANAGAN: I simply maintained the existing structure within the award.

PN20

THE DEPUTY PRESIDENT: But during some of the past State Wage Case decisions so you are supposed to have an award review as well. Does that not mean that the base rate increases by the supplementary payment amount, what is the significance of it in keeping it separate?

PN21

MR FLANAGAN: Well, it is not actually anything that I directed specific attention to, Deputy President. I have simply - - -

PN22

THE DEPUTY PRESIDENT: No, but doesn't that affect though, just being the devil's advocate, doesn't that affect the figure because the base rate is different? If, for example, you use your comparison chart - sorry, your schedule of calculations, have you done it on the basis of adding the supplementary payment to the base rate to get your figure?

PN23

MR FLANAGAN: I don't recall, but I believe I would have applied it to the base rate. My recollection is the supplementary payment was excluded from the 2 1/2 per cent, but I don't have a calculator with me and it is a while since I have actually done the calculation I am afraid, Deputy President, I can't be certain.

PN24

THE DEPUTY PRESIDENT: We just might go off the record.

OFF THE RECORD

[10.40am]

RESUMED

[10.50am]

PN25

THE DEPUTY PRESIDENT: Mr Flanagan?

PN26

MR FLANAGAN: Thank you, Deputy President. Deputy President, we thank you for the opportunity to have a brief adjournment there. During the course of the adjournment I have discussed with Mr FitzGerald the desirability of altering the proposed draft order by joining together the base rate and supplementary payment so that it is expressed as one figure in lieu of what appears to be an artificial distinction which in our submission serves no purpose, but to - other than to create potentially some argument in the future if we were to have percentage based increases on the role of the supplementary payment.

PN27

Now, clearly the position is that determining the actual rate of pay that people are receiving what occurs is the supplementary payment and the base rate are added together. Now, we can see from the union's perspective no good purpose for continuing to identify separately a supplementary payment. So Mr FitzGerald has advised that given that there is no cost impact and given that it simply simplifies, if I can put it, the wage rate structure that he has no objection to that. So in those circumstances we would be seeking that the award be varied, but we would do that the total amount per week of 38 hours appearing in the right hand column of variation number 2 will in fact be the figure which is applicable, but we would simply seek to provide the Commission in writing an amended schedule of variation which has the effect of - - -

PN28

THE DEPUTY PRESIDENT: No, it won't be an amended schedule of variation, it will be amended draft order.

PN29

MR FLANAGAN: An amended draft order, yes, thank you, Deputy President. An amended draft order which simply brings the base rate and supplementary payments together. There will be no change other than to have the one figure where there are currently two figures, and two figures it seems to no good purpose. So if it pleases the Commission.

PN30

THE DEPUTY PRESIDENT: Good, thank you. Mr Reeves, have you any submissions?

PN31

MR REEVES: Just that we agree with the submissions put up by Mr Flanagan and the AWU, and the work he has put in on this, and agree with the draft order. Thank you.

PN32

THE DEPUTY PRESIDENT: Good, right. Well, the proposed draft order.

PN33

MR FITZGERALD: Thank you, Deputy President. I intend to make only brief submissions. I just make the point that it is somewhat difficult for the parties to respond to an application like this in a mopping up exercise type

which has been the basis of this exercise. And it is not the employer's fault that the various wage cases haven't been applied as they have appeared from year to year. I am somewhat cautious, particularly the figures, when this is done in one fell swoop. I am aware only of, and this is just through my research, that the award is in fact varied for the 1998 safety net increase and that was done by Commissioner Imlach in matter T7839 of 1998, but I am not aware of any other of the increases which have been applied in terms of the schedule which Mr Flanagan has produced.

PN34

I just make that point for the purposes of the record that it can be a recipe for some difficulty if this exercise is done in one fell swoop as has been done in other awards. I suspect from here on that the award will be kept up to date by the various unions to - the parties to the award. But to apply eight or nine increases at once and to check the figures is somewhat difficult - sometimes somewhat difficult. But nevertheless we are happy to consent to the application and the proposed amended draft award and draft order.

PN35

It has no cost impact as Mr Flanagan has indicated that. The enterprise, being Pasminco Hobart Smelter is subject to an agreement, a section 55 agreement of this Commission which of course has rolled up rates, if I can put it that way, annualised rates which override the effect of this award. And for those reasons my instructions are to consent to the application.

PN36

THE DEPUTY PRESIDENT: So this purely a safety net award as far as you are concerned?

PN37

MR FITZGERALD: That is what we see it as Deputy President.

PN38

THE DEPUTY PRESIDENT: In response, and I am not too sure I have to respond, but in response to your comment about the 1998 State Wage Case being inserted in the award by Commissioner Imlach, the schedule of calculations presented by Mr Flanagan has virtually re-jigged the rates from 1991 State Wage Case right through. So I suppose even if the 1998 State Wage Case was included, then it wouldn't have been an accurate figure to pick up all the earlier State Wage Case decisions. So I have taken it that Mr Flanagan's schedule of calculation that goes right back to '91 and work the figure right through in line picks up the true value and rate for the 1998 State Wage Case decision.

PN39

MR FITZGERALD: That is correct. I mean the order of Commissioner Imlach would have stood of course, had legal application - - -

PN40

THE DEPUTY PRESIDENT: Yes, at the time, yes, I totally agree.

PN41

MR FITZGERALD: But again somewhat doubtful application given the effect of the agreement. No, I agree that this effectively corrects that and it doesn't seek to provide that increase again, of course, it just corrects it in the proper sequence.

PN42

THE DEPUTY PRESIDENT: Yes, right. Any further submissions?

PN43

MR FITZGERALD: No further submissions.

PN44

THE DEPUTY PRESIDENT: Well, I can indicate to the parties that I will vary the award in terms of the proposed draft order to be supplied by Mr Flanagan and it will be operative from the first full pay period to commence on or after today. Thank you.

ADJOURNED INDEFINITELY

[11.00am]