

**HEARING COMMENCED 10.40am**

COMMISSIONER: I'll take appearances.

5 **MR T.J. EDWARDS:** If it please the commission, EDWARDS, T.J., and appearing with me **MR D. CLOVINGTON** and **MR C. ANDERSON** for the applicant.

COMMISSIONER: Thanks, Mr Edwards.

**MR R. FLANAGAN:** If it pleases the commission, FLANAGAN, R., for the Australian Workers' Union, Tasmania Branch.

COMMISSIONER: Thanks, Mr Flanagan.

10 **MR T. HARDING:** Sir, HARDING, T., representing the AMWU.

COMMISSIONER: Thanks, Mr Harding.

**MR K. BECKER:** BECKER, K., I appear on behalf of the CEPU in this matter.

COMMISSIONER: Thanks, Mr Becker.

15 **MR R. HAILE:** Commissioner, I appear for the Australian Services Union, ROSS HAILE.

COMMISSIONER: Thank you, Mr Haile. Well, Mr Edwards?

20 MR EDWARDS: Thank you, commissioner. This application is essentially in the form of housekeeping, I think it could best be described and it picks up a number of issues, including the change of name of the old company, Goliath Cement to Australian Cement Holdings and also the alterations required to the agreement, to bring about the final phase of the 1996 enterprise agreement which applied at the Goliath site.

25 By way of explanation, commissioner, I'd like to table an exhibit, firstly, in respect to the name change issue, which is an extract from the 1996 agreement.

COMMISSIONER: **EXHIBIT E.1.**

30 MR EDWARDS: I'd like to take the commission firstly to the clause titled, Company Future Proposals and that front page is only included so that the commission is aware of which clause this fell in and then to the last dot point which is found towards the top of page7 of the exhibit, where it reads:

35 *It is anticipated during the life of this agreement Goliath Portland Cement Company Limited will be consolidated into the parent*

5                    *company Australian Cement Holdings Pty Ltd. The parties have agreed that for the purposes of this agreement, this consolidation does not amount to a termination of employment but will be treated as a transmission of employment with full preservation of all entitlements from this agreement and/or the Goliath Cement Enterprise Award and will therefore not attract claims for redundancy payments.*

10                    I think the commission as currently constituted would recall that that was specifically raised in the transcript as part of the ratification processes for that predecessor agreement, the 1996 agreement.

15                    The application that we've made is to bring into fruition the change of name of the company, as a result of that consolidation, into the parent company. That has necessitated a change in Clause 1 - Title, Clause 2 - Scope and in Clause 6 - Parties and Persons Bound of the award and that is picked up by variations numbers 1, 2 and 3 in the attachment to our application to vary the award and I would submit, commissioner, that we would see the attachment forming the basis of the draft order for the purposes of the processing of this application.

20                    In respect of those three variations, commissioner, it is our submission that they should be operative as from 1 July 1998, which was the effective date of the change of the company name and that was a matter that has been discussed with the commission as currently constituted as part of the making of the previous agreement, that we would facilitate that change from the date of effect of the change of name or the consolidation into the parent company, more properly explained.

30                    We would submit that the change in name has very little actual impact, except in trying to get your tongue around the name of the company. Other than that, there is no change in substance and transmission law would see that all rights, obligations, et cetera would have transferred with employees as at that date but that is in addition - strictly in accordance with the 1996 agreement in any event.

                      The other issue that is embraced by the application - do you want to deal with these separately or all together, commissioner?

35                    COMMISSIONER:    I think we're going pretty well as it is. Proceed as you're going, Mr Edwards.

40                    MR EDWARDS:      Okay, we'll bat on then. Thank you, commissioner. The other variation which is sought by our application is in respect to Clause 30 - Sick Leave of the Goliath Cement Enterprise Award, and that application is made to bring about the change which was embodied within the 1996 enterprise agreement at Goliath.

                      I would like to table another exhibit, if I might.

COMMISSIONER: **EXHIBIT E.2.**

MR EDWARDS: Commissioner, exhibit E.2 again is an extract from the Goliath Enterprise Agreement 1996 and specifically pages 21 and 22, under the heading of Sick Leave, which is found half-way down page 21:

*The agreement recorded as at the date of implementation of the agreement permanent employees have the option of two methods of being covered for sick leave, namely, the current Goliath Cement Enterprise Award sick leave system or the system described below:*

*Employees who stay in the old system will not get access to the attendance reward.*

*Employees who stay in the old system will be paid on termination, based on base rate at the date of termination of employment. Base rate is defined on page 14:*

*All employees who change to the new system excluding casual employees will have access to sick leave, subject to the following conditions.*

It goes through and deals with the conditions that are applicable to sick leave under the terms of that enterprise agreement.

On the top of the following page, it talks about pay-out of current sick leave entitlements, where it says:

*Employees will be able to make the decision to withdraw from the old scheme and change to the new scheme on two separate occasions. The first will be before 1 December 1996 and the second will be during October 1997. Employees who change to the new scheme may withdraw their entitlement from the old scheme at any time up to retirement, subject to the taxation requirements at the time of payment.*

*At the time of payment the accrual will be the hours accumulated up until 1 December 1996 for those who withdraw at that date, or the hours accrued up to 31 October 1997 for those who withdraw during October 1997.*

*The actual entitlement will be as prescribed in the Goliath Cement Enterprise Award dependent upon years of service calculated at the date of actual payment. The amount paid out will be at the*

*base rate at the time of payment as defined in the Goliath Cement Enterprise Agreement.*

I cease the quote there for a moment, commissioner.

5 I just bring to your attention that the current Goliath Cement Enterprise Award does contain provisions for the pay-out of sick leave, which is on a sliding scale basis dependent upon actual numbers of years of service at Goliath and it was the decision of the parties in their enterprise bargaining process to allow people to access that payment in accordance with the provisions I've just read and move to a  
10 no credit no debit sick leave system as at December 1996.

I go back to the exhibit, where I left off, commissioner, and it says:

*New sick leave entitlements and attendance allowance encompassed in this enterprise agreement will be transferred to the Goliath Cement Enterprise Award to form a constant  
15 entitlement for employees should there be a withdrawal from the CBA. This is subject to a successful application to the Tasmanian Industrial Commission.*

Again, I put to you, commissioner, that you will possibly recall that as part of the proceedings before you in Railton in 1996 when the  
20 previous agreement was ratified, this provision was specifically drawn to your attention and the parties indicated their intention to bring the matter to you to record in the award the change of arrangements in respect to sick leave.

It is that change that the application that's now before you seeks to  
25 bring into effect. It's a shortened version of much of what I've just read out of EBA 1996 and what it does is, particularly at clause (b) in the transition or provisions, it talks about employees being able to withdraw their entitlements and it talks about the entitlement being calculated in accordance with Clause 30 - Sick Leave of the Goliath  
30 Cement Enterprise Award and specifically nominates amendment No. 3 of 1996, which was the last time that sick leave was printed as part of the Goliath Cement Enterprise Award and that brings into being exactly those changes that we've talked about in the 1996 enterprise agreement.

35 We would submit that the application that is before you is largely facilitative in nature and is not bringing about any change in fact or circumstance. It is not changing anyone's entitlement. It is simply recording for prosperity a change already made in the case of sick leave and in the case of the first three variations encompassed in our  
40 attachment, they are largely cosmetic to bring about a change in name for the company.

5 We would submit that the applications are in accordance with the commission's Wage Fixing Principles and most particularly, either those relating to enterprise bargaining or structural efficiency and in our view, are in accordance with the public interest requirements of the Act. We therefore ask that the commission grant our application as presented. If it please the commission.

COMMISSIONER: Yes, thanks, Mr Edwards. What about the operative date for that sick leave?

10 MR EDWARDS: Sorry, I did forget to mention that. It's our submission that the variation ought to be operative from the beginning of the first pay period on or after 1 December 1996. That is, the date of effect of the change that actually took place at the plant as a result of the implementation of the 1996 enterprise agreement and in that regard, commissioner, I would submit that that is the special  
15 circumstance which we say in accordance with the Act would allow the commission to exercise its discretion to award a retrospective date of operation, that the parties are in agreement, which is the first test and, secondly, there is no violence done to the public interest by that retrospective application because the change that is facilitated by the application is already in existence by virtue of the enterprise  
20 agreement already approved by the commission as currently constituted. If it please the commission.

COMMISSIONER: Thanks, Mr Edwards.

25 MR FLANAGAN: We support the submissions of Mr Edwards and seek the approval of the variation in terms of attachment A to the application. If it pleases the commission.

COMMISSIONER: Thanks, Mr Flanagan.

30 MR BECKER: Commissioner, in supporting the application and the submissions of Mr Edwards, the CEPU has been involved in all of these negotiations. Mr Edwards is right. It's a tidying up exercise since 1996. The pain of 1996 was obviously the name change to the company and it took some time for that to go through and, as I understand it, the sick leave system that was put into place has been very effective and efficient for all parties. We submit to you that it  
35 meets the commission's principles and doesn't affect the public interest.

COMMISSIONER: Thanks, Mr Becker. Mr Harding?

MR HARDING: Agreed as presented, sir.

COMMISSIONER: Thank you. Mr Haile?

40 MR HAILE: We support Mr Edwards.

COMMISSIONER: Thanks, Mr Haile. Nothing else? Thank you, gentlemen.

I indicate now, this amendment will be approved, operative from the date requested. Thank you.

5 **HEARING CONCLUDED 10.50am**