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TRANSCRIPT OF PROCEEDINGS

O/N 1502

TASMANIAN INDUSTRIAL COMMISSION

COMMISSIONER T.J. ABEY

T No 11434 of 2004

BUILDING AND CONSTRUCTION INDUSTRY AWARD

**Application pursuant to the provisions of
section 23(2)(b) of the Industrial Relations Act 1984
by the Construction, Forestry, Mining and Energy
Union, Tasmanian Branch to vary the above award
to vary clause 38 - amenities**

HOBART

9.30 AM, WEDNESDAY, 15 DECEMBER 2004

Continued from 24.5.04

**This transcript was prepared from tapes recorded
by the Tasmanian Industrial Commission**

PN28

THE COMMISSIONER: Good morning. Appearances seems to be the same as when this matter was last before the commission, save that Mr Stirling is not with us today.

PN29

MR WHITE: That is right, Commissioner.

PN30

THE COMMISSIONER: What is the position, Mr White?

PN31

MR WHITE: Mr Commissioner, I believe that we have reached consent on the matter and it is - if I can just make one little correction. The application was to vary clause 38 of the Award - our original application made by removing the existing division A and replacing it as follows: division B, covering civil construction and maintenance.

PN32

THE COMMISSIONER: Yes.

PN33

MR WHITE: We have amended the application a few times over the last few months to reach the consent position. I think we have sent all the amendments to the Commission but I have got a few problems here for you.

PN34

THE COMMISSIONER: I got an email on Monday this week. Does that incorporate - - -

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MR WHITE: That would be the latest amendment, just to clause 38.1.

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THE COMMISSIONER: That is right.

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MR WHITE: To make it clear that it does not include civil construction and maintenance.

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THE COMMISSIONER: That is, yes. So that is the latest document, I do have that one.

PN39

MR WHITE: Yes. I haven't got anything further to submit. I believe that if there is consent, it is well within the public interest and that the amendment could go ahead. And then just leave it up to Mr Flanagan to see if they've got anything. Thank you.

PN40

THE COMMISSIONER: Mr Flanagan? Do you have anything?

PN41

MR FLANAGAN: Thank you, Commissioner. Commissioner, the AWU doesn't claim to have their employees involved on the building side of this award, but we fully support the notion that there should be adequate provisions as proposed by the CFMEU in this application. And believe that the award should be varied to incorporate such provisions. We do, however, have a concern not to substance, but to form.

PN42

In terms of the proposed amendment, it is not clear - and I don't think it would be clear from the material that you received on Monday, that there should be a sub-heading if you like, which says division A building work - - -

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THE COMMISSIONER: I see, yes.

PN44

MR FLANAGAN: - - - which appears - should appear under the heading clause 38 Amendment.

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THE COMMISSIONER: Yes, division - sorry?

PN46

MR FLANAGAN: Division A building work. The current clause 38 has a division A building work and then a division B civil construction. This application only varies that clause, as I understand it, insofar as it relates to division A.

PN47

THE COMMISSIONER: Yes.

PN48

MR FLANAGAN: Yes. So, now the amendment in scope actually reflects discussions between myself and the CFMEU, and we think that technically, that has addressed the major area of concern. I am concerned, though, that within the clause of 38.4(b), if I can take you to that, and again this is not an issue of substance but form. It says, "Type 1: Major Construction, and Type 2: Minor Construction." And then further down at 38.5 same page, it says, "At the planning stage of each construction project."

PN49

Now, I know that with the amendment that we have made to the scope technically it is - for people such as yourself it is clear that this clause is restricted in its application to building sites. But it seems to me, to avoid any confusion, for the average punter on the street - if I can put it that way - that where it refers to major construction - Type 1: Major Construction, Type 2: Minor Construction and then down in 38.5 each construction project, if it said major building construction, minor building construction and each stage of each building construction project, I think that would add clarity which would

avoid any confusion for the users of the award, other than Industrial Relations practitioners.

PN50

THE COMMISSIONER: What do you say about that, Mr White?

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MR WHITE: I could agree to that, those couple of changes. But to me, and I am probably looking at it wrong, we still haven't got an application to vary division A of the clause, and division A spells out building work; immediately followed by division B civil construction and maintenance work.

PN52

THE COMMISSIONER: Yes.

PN53

MR WHITE: I can see what Robert is saying, that it could be for the average person that they might misinterpret this by, I suppose this is going to take up a few pages and they may not get to division B civil construction work.

PN54

THE COMMISSIONER: It certainly adopts the notion of an abundance of caution, Mr Flanagan, but if the parties are content with that alteration, we will put it in.

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MR WHITE: It doesn't change the intent of anything.

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THE COMMISSIONER: No, no.

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MR WHITE: I will see what the Employers Association

PN58

THE COMMISSIONER: I will see what the employers say. Is that all you wish to say, Mr Flanagan?

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MR FLANAGAN: Yes, that is all, Commissioner. Can I add that I don't believe that the application should be delayed as a consequence of some - of the form - - -

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THE COMMISSIONER: No.

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MR FLANAGAN: - - - as opposed to substance.

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THE COMMISSIONER: Yes. Mr Mazengarb?

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MR MAZENGARB: I will bow to Mr Atkins first.

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THE COMMISSIONER: Mr Atkins?

PN65

MR ATKINS: If the Commissioner pleases, certainly the comments made by Mr Flanagan are noted and certainly awards are not necessarily easy for the layman to understand and construe, and obviously our colleagues representing the employer organisation - employee organisations would acknowledge that, and have offered some leniency in those areas in the past.

PN66

Certainly, from where I am sitting, or standing, I don't have a problem with what Mr Flanagan is suggesting, providing it doesn't hold off the process. I think it is a fair comment to say, in relation to the total clauses we have got before us today, is that it has been subject to significant discussion and consultation amongst representative groups and the document you have before you certainly enjoys the support of the employer organisations as such. Thank you.

PN67

THE COMMISSIONER: Thank you, Mr Atkins. Mr Mazengarb?

PN68

MR MAZENGARB: Thank you, Commissioner. I can endorse the comments made by my colleague, Mr Atkins and whilst I am on my feet I wish to express our appreciation from the TCCIs perspective at least, for the input the NBA have had in this matter, particularly with regard to the negotiation directly with the unions.

PN69

With regard to the suggestion made by Robert, I have no difficulties with that. My view is if there is potential for misunderstanding as a result of constructing clauses and awards, let us not create that misunderstanding, let us clarify it before it becomes an issue. So if that is the purpose of the suggestion to amend the proposed award variation, I am fully in support of it; if the Commission pleases.

PN70

THE COMMISSIONER: I will incorporate those amendments into the order. I would congratulate the parties on reaching a position of consent. I have reviewed the clause, it does seem a very sensible and practical clause, which protects employers - employees, but also does recognise the realities that - of different construction sites and the circumstances that go with that. The application will be granted. Is the operative date of today appropriate?

PN71

MR WHITE: Yes, Commissioner.

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THE COMMISSIONER: Right. The clause will be varied, operative from the 15 December 2004. The formal decision to that effect with the order will be issued as soon as possible. On that basis, the Commission stands adjourned.

PN73

Sorry, just before I do adjourn, I should indicate to the parties that I have been very tardy in relation to 11386 of '04; that is an application by the CFMEU in relation to the classification structure. The realities of life have been over the last five months that matters have come up which haven't been of higher importance but have been, I have assessed, rightly or wrongly, as been of requiring a priority attention, particularly decisions dealing with individual disputes and unfair dismissals, etcetera. And as a consequence this matter has been allowed to slip. It hasn't been lost. It is my intention to get to it and finalise it in January, if that is at all possible. On that basis, the Commission stands adjourned.

ADJOURNED INDEFINITELY