

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T Nos 3802 and 3805 of 1992

IN THE MATTER OF an application by
the Construction, Forestry and
Mining Employees Union to vary the
Timber Merchants Award and the
Cement Makers Award

re name change

COMMISSIONER IMLACH

HOBART, 16 June 1992

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: I'll take appearances.

MR M. CLIFFORD: If the commission pleases, MARTIN CLIFFORD, appearing on behalf of the Construction, Forestry and Mining Employees Union.

COMMISSIONER IMLACH: Thanks, Mr Clifford.

MR T.J. ABEY: If the commission pleases, I appear in both matters for the TCI, and I also appear for the Goliath Portland Cement Company in respect of the cement makers; ABEY T.J.

COMMISSIONER IMLACH: Thank you, Mr Abey.

MR CLIFFORD: Mr Commissioner, I was going to seek to have both applications joined today, but I think we should run them separately at this point in time because of the intending submissions from the TCI in the cement makers, and probably if we were to lead off with the cement makers and have that one out of the road first.

COMMISSIONER IMLACH: Right. Cement makers - T. 3805.

MR CLIFFORD: That's - 3805. Mr Commissioner, the reason for seeking the variation of the award today, is brought about by the amalgamation of the BWIU and the ATAIEU effected from 23rd September 1991 in the federal commission, and the further amalgamation of the ATAIEU, BWIU amalgamated union with the United Miners Federation in the federal commission on 10th February 1992.

The same amalgamations were granted by a full bench of the state commission on the 11th day of May 1992 under application T.3762 of 1992, and if I may at this point in time, hand up two exhibits.

COMMISSIONER IMLACH: Now which is No.1, Mr Clifford?

MR CLIFFORD: No.1 would be the letter containing four paragraphs.

COMMISSIONER IMLACH: Right - and what do we say - CFMEU - is that how you pronounce it?

MR CLIFFORD: That sounds good.

COMMISSIONER IMLACH: CFMEU.1 is the one with four paragraphs and CFMEU.2 is the one with three paragraphs. Right.

MR CLIFFORD: Right - and they're two letters from the Registrar of the Tasmanian Industrial Commission confirming the amalgamation in the state of the BWIU and the ATAIEU. And the second exhibit - that confirms the amalgamation of the

BWIU, ATAIEU amalgamated unions and the miners to then bring about the Construction, Forestry and Mining Employees Union.

Mr Commissioner, I seek today to vary clause 6 of the Cement Makers Award by deleting the names - or the name of the BWIU and inserting the Construction, Forestry and Mining Employees Union to complete the amalgamation process for the amalgamations that have taken place in the state jurisdiction.

Without going any further I'd like to leave it there and hear submissions from the TCI and see if there's any need to go any further on our application for an award variation. If the commission pleases.

COMMISSIONER IMLACH: Well, yes, Mr Clifford, we'll put it this way, that as far as you're concerned that's the end of your submissions.

MR CLIFFORD: Pretty well, yes, that -

COMMISSIONER IMLACH: That's how you would have put it if you didn't know that there were going to be some other thoughts?

MR CLIFFORD: That's right, yes. We're seeking simply a name change to reflect the amalgamation and nothing else.

COMMISSIONER IMLACH: Thanks, Mr Clifford.

MR CLIFFORD: Thank you.

COMMISSIONER IMLACH: Well, Mr Abey, it sounds as though we're going to hear something from you.

MR ABEY: I don't think everyone should get too excited, Mr Commissioner, but there are some observations that we would like to make and seek the guidance of the commission, and I'd like to practice that by saying that in normal circumstances where there is a bona fide organisation party to an award or - I'll rephrase that - an organisation which is party to award in a bona fide manner and that organisation's - organisation happens to change its name, we would be of the view that as a matter of right, the name should be changed in the award without that organisation having to run the full gamut of registration and termination of interest.

However, in this particular case, the circumstances - excuse me - are a little bit different in that the sponsoring organisation, namely the BWIU, has never in historical terms been a party to the Cement Makers Award.

During the procedures for the initial registration under this Act, it was agreed, I suppose, by the PEAK councils and the commission, that rather than trying to convene hearings for each and every award and list objections and deal with each

objection, the TTLC would try to process the various applications for interest and deal with the objections so far as they possibly could by way of negotiation.

During that process, this particular matter in our submission slipped through the net in that the BWIU managed to get themselves named as parties and persons bound the Cement Makers Award when they were not entitled to. And I say they were not entitled to in that, to my knowledge they've never had members at Goliath Portland Cement Company, and that is the only company bound by the award. They've never sought to represent members at that company and to my knowledge they have no members as of to date.

Now it goes without saying that the - the two primary preconditions to have an interest in an award is that, 1) the eligibility rule of the organisation allows them to be - enrol members in that industry, and secondly, that they do in fact have members in that industry.

Now I make no submissions on the first point and I offer no contest that their eligibility rules would in fact allow them to enrol members but the plain facts of life, and I believe the uncontested facts of life, are that they do not have members at Goliath and at least of recent memory never have had members and have never sought to represent members - or represent employees of that particular establishment.

So, having said that, we say that they are named by default and now we have an application to change that name and it would be our submission that that should be dealt with on its merits; it is award change and it's not simply a matter of confirming one mistake with another.

We say that for the commission to be satisfied that the name should be changed as in the persons and parties bound, then the commission should also be satisfied that the organisation is entitled to be a persons and parties bound - and in our submission they are not. If the commission pleases.

COMMISSIONER IMLACH: Yes, thank you, Mr Abey. Mr Clifford?

MR CLIFFORD: Mr Commissioner, if I may head through Mr Abey's submission in some sort of an order, under normal circumstances that Tim was talking about, a party to an award, a bona fide matter, that I really think there's no way would we have been granted responsency to the award unless we had met the criterias. Never been a true party to the award - I find that a little bit difficult to believe that we've been named there - we have been in negotiations over a period of time. Not being fully au fait with the company and all the areas of the operations that I don't see that there is an exclusion of carpenters ever being hired in that company, so I'd certainly say there is still scope and nobody has ruled

out either from the management side or the TCI side that they would never engage carpenters up there.

The TTLC process - it was certainly quite a while ago that the agreement to limit any further respondencies to award took place. I can't quite recall the date but I'm quite sure before I even started with the union, so it's over some 5 or 6 years ago. As the TCI stated, that they let us slip through the net - it wasn't us doing it by other devious means; that it was on its merit that it was granted, and also to pick up the points that Tim was stating, that the main criterias to be named as a respondent to award, that you have to meet the criterias of 63(10)(c), (i), (ii) and (iii), and obviously that wasn't met at the time that we were granted the respondency, and to be said to be named by default I think that's a little bit over the top. And I will be asking that we are granted the status that we already had in the award so that we do continue to be a party to the award, and at any later state, that if the TCI were to approach us in a proper manner and seek a rationalisation of parties and persons bound in the award that we may be able to accommodate some agreement. But at this point in time we'd be seeking our name change be granted and follow the process from there. If the commission pleases.

COMMISSIONER IMLACH: Yes, thank you, Mr Clifford. Well I'll reserve my decision on this particular matter. Thank you.

Now the next one.

MR CLIFFORD: The next one, Mr Commissioner, is T.3802, which is the Timber Merchants Award. If I go through the same spiel again, I think. Mr Commissioner, the reason for seeking the variation of the award today is brought about by the amalgamation of the BWIU and the ATAIEU effective from 23rd September 1991 in the federal commission, and the further amalgamation of the ATAIEU and the BWIU amalgamated union with the United Miners Federation of Australia in the federal commission on 10th February 1992.

The same amalgamations were granted by the full bench of the state commission on the 11th day of May 1992, under the application of T.3762 of 1992. And if I draw your attention just back to exhibits 1 and 2 again, Mr Commissioner.

Mr Commissioner, I seek the variation of clause 6 of the award by deleting the names - the name of the ATAIEU and inserting the Construction, Forestry and Mining Employees Union to complete the amalgamation process for these amalgamations. Mr Commissioner, I might - may just draw your attention to the respondency of the ATAIEU that there is only three unions with inside of the respondency area and the ATAIEU are certainly the only ones with the coverage that we are seeking; that the others are storemen and packers and the clerks. So we would

see that there should not be any conflict of interest there should be with inside of the public domain - the public interest If the commission pleases.

COMMISSIONER IMLACH: Thanks, Mr Clifford.

MR ABEY: We consent to the application, Mr Commissioner.

COMMISSIONER IMLACH: Yes. Alright, well I'll indicate now that that - this particular matter, T.3802, will be endorsed and the amendment made as requested. I repeat in the previous matter, T.3805, I'll reserve my decision. And the operative date gentlemen for both of them? As of today? Thank you, gentlemen. These matters are closed.

HEARING CONCLUDED