

IN THE TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T. NO. 403 OF 1986

IN THE MATTER OF AN
APPLICATION BY THE BY THE
FEDERATED ENGINE DRIVERS AND
FIREMEN'S ASSOCIATION OF
AUSTRALASIA (TASMANIAN BRANCH)
TO VARY THE VEGETABLE
PRESERVERS AWARD

RE: WAGE RATES FOR BOILER
ATTENDANTS AND INSERTION OF A
NEW DEFINITION.

COMMISSIONER R.J. WATLING

13 JUNE, 1986.

REASONS FOR DECISION

APPEARANCES:

For the Federated Engine
Drivers & Firemen's Association
of Australasia (Tasmanian
Branch)

- Mr. J.T. Lynch

For the Tasmanian Chamber
of Industries.

- Mr. T.J. Edwards

DATE AND PLACE OF HEARING:

11 June, 1986

Hobart.

This application was made by the Federated Engine Drivers & Firemen's Association of Australasia (Tasmanian Branch) [F.E.D. & F.A.] to vary the wage rates for boiler attendants contained in the Vegetable Preservers' Award.

HISTORY

Inclusion of a boiler attendant's classification in this award and an examination of the appropriate rate to be paid to that classification has been the subject of a review carried out by me during the hearing of application T. No. 282 of 1985.

In my decision arising out of that matter I said:

"However, I am not prepared to accept, at this time, the amount of \$259.60 per week sought by the Tasmanian Chamber of Industries as being the appropriate rate for this classification.

I believe that an amount of \$245.30 per week should be inserted in the award as an interim rate.

This would give the parties an opportunity to present further submissions to the Commission (via a fresh application) and enable the Commission, along with the parties, to examine in greater depth, such things as whether or not there should be grades within the classification corresponding to the work required to be performed."

This decision was later appealed by the F.E.D. & F.A. and on 10 April 1986, a Full Bench of the Commission dismissed the appeal (see T. No. 331 of 1986).

The application currently before me seeks to address the suggestion I put forward in my original decision on this matter (T. No. 282 of 1985) and to that extent I see it as a continuation of that hearing.

CLAIM

Mr. Lynch, representing the F.E.D. & F.A. sought to amend the award by deleting the existing interim rate for a boiler attendant and inserting in lieu thereof the following:

"3. BOILER ATTENDANT

	Amount Per Week \$
(a) Boiler Attendant	269.50
(b) Boiler Attendant In Charge of Plant -	

A boiler attendant in charge of plant (as defined) shall be paid in addition to the rate prescribed in (a) above, an allowance of \$14.90 per week.

This allowance is payable for all purposes of the award."

The claim also included a definition for 'Boiler Attendant In Charge of Plant'.

There was complete agreement between the F.E.D. & F.A. and the Tasmanian Chamber of Industries (T.C.I.) on -

- (a) the amount payable per week to a boiler attendant;
- (b) the boiler attendant in charge of plant allowance, including the definition; and
- (c) the operative date (from the first full pay period to commence on or after 11 June 1986).

The main points contained in the submissions of Mr. J.T. Lynch and Mr. T.J. Edwards were as follows:-

- (i) The rate set out in the application was already being paid by employers involved and as such there would be no cost to the industry, through the granting of the claim, nor would it have any effect on the economic position of this industry or any other industry in the State.
- (ii) There was no need for any other grade of boiler attendant to be included in the award except for a 'boiler attendant in charge of plant'.

- (iii) The new amount of \$269.50 was the previous amount claimed by the T.C.I. (see T. No. 282 of 1985) for boiler attendants including the 3.8% November 1985 national wage increase.
- (iv) The decision arising out of application T. No. 282 of 1985 granted an interim amount of \$245.30 and it also allowed the parties time to have a closer look at the position that existed in the industry to ascertain the appropriate rate and, also required the parties to further address the Commission on the matter.
- (v) The T.C.I. and the F.E.D. & F.A. had undertaken an exercise to examine the appropriateness of the rate of pay for boiler attendants.
- (vi) As there are boiler attendants in the industry receiving a rate of pay in excess of that claimed, the Commission should retain the 'savings' clause so no employee is reduced in pay if the Commission was to grant the claim.
- (vii) The rate claimed was one of the lowest being paid in the industry.

- (viii) The rate being sought would not be a trendsetter and was an adequate wage for the work in question.
- (ix) The one classification plus the allowance was totally suitable at this time to cover the field of boiler attendants within the scope of this award.
- (x) The application should be considered in light of Principle 10 of the Wage Fixation Principles and, in particular, 10 (b).
- (xi) The claim was sustainable within the Principles.
- (xii) The parties agreed that the claim, if granted, would be a 'minimum rates award'.
- (xiii) There are other employers in the industry paying in excess of the figure claimed.
- (xiv) As a result of an exercise undertaken following the handing down of T. No. 282 of 1985 and T. No. 331 of 1986, the F.E.D. & F.A. and the T.C.I. looked at the work performed by boiler attendants that should attract an 'in charge of plant' allowance to undertake general repair work on and around the boiler.

- (xv) Both Federal awards applicable to boiler attendants provide for an 'in charge of plant' allowance for people who perform that work.
- (xvi) It was work which was conducted over and above work expected of a boiler attendant.
- (xvii) The Australian Conciliation and Arbitration Commission have for a large number of years accepted that employees who are boiler attendants required to do minor maintenance work to keep the apparatus running, should attract an additional allowance.
- (xviii) The allowance claimed is equal to that prescribed in the Metal Trades Industry Award and the Federated Engine Drivers and Firemen's (General) Award 1968 at \$14.90 and payable for all purposes of the award.

DECISION

The subject matter of this application seeks to finalise the making of a first award for boiler attendants in the industry within the scope of this award.

I have noted the submission of Mr. T.J. Edwards when he quoted from the Appeal decision of Kirby C.J., Moore J. and Commr. Finlay in the General Clerks (Northern Territory) Award where the Full Bench said -

"As this is therefore a first award it is proper for us to look at rates now being paid and conditions of employment now in operation. We have before us an industrial dispute regarding an isolated group of workers who have never had award coverage before and justice and reasonableness requires us to fix for them a proper wage. In our view it would be neither just nor reasonable to ignore the rates which employers have chosen to pay even though the task of using them as a guide is difficult because of the many divergencies which exist.

This approach is consistent with the attitude of Federal arbitral tribunals to the making of first awards since the time of Higgins J. (See for example the Marine Cooks case of 1908⁽¹⁾)."

I am satisfied that the amount claimed is currently being paid by employers in the industry who employ boiler attendants. In some cases the rates may even be higher than that claimed.

On the last occasion I examined this matter I left the door open for the parties to come back with more information on the appropriateness of the rate and, indeed, whether or not the award should contain various scales for boiler attendants as I was not satisfied on the evidence put to me on that occasion.

Now that the homework has been completed it is easy for me to arrive at the conclusion that the claim should be granted in its entirety as the parties have established that the amounts sought are appropriate in all the circumstances.

The definition of 'Boiler Attendant In Charge of Plant' also receives my support.

I have arrived at the conclusion that the claim falls within the Wage Fixation Principles for the establishment of a first award and does not contravene the provisions of the Industrial Relations Act 1984.

SAVINGS PROVISION

It was brought to my attention during the course of the hearing that some employers may be paying their employees wage rates and conditions in excess of those prescribed in this decision.

It is not my intention that any employee be disadvantaged or suffer any diminution of remuneration through the making of this award.

The consent order in the form requested by the parties is attached to this decision.

