



TASMANIA

Tasmanian Industrial Commission
Industrial Relations Act 1984

T No. 8838 of 2000

IN THE MATTER OF an application by
The Australian Workers' Union,
Tasmania Branch for an interpretation
of the Farming and Fruit Growing
Award

Re: Clause 2 - Scope

PRESIDENT LEARY

HOBART, 29 April 2002
Continued from 24 January 2001

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING RECOMMENCED 10.44am

PRESIDENT: Could I take appearances please.

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

5 PRESIDENT: Thank you.

MS B. RONEY: If it pleases the commission, BRONWYN RONEY for Tasmanian Farmers and Graziers Employers Association.

PRESIDENT: Thank you. Where are we at, Mr Flanagan?

10 MR FLANAGAN: Firstly, president, I think it's worth noting that the TGFA are interveners in this matter and do not represent the employer.

President, this matter has been before the commission since February of 2000 and has had a number of attempted starts.

15 I'd seek to tender a copy of T30 of 1985 which is the seminal decision of the Tasmanian Industrial Commission in relation to applications for interpretation.

PRESIDENT: Thank you.

20 MR FLANAGAN: If I can the commission to page 1 of that decision – page 3, I beg your pardon. The then president of the industrial commission on that page states that it is appropriate to make preliminary observations regarding the manner in which questions of interpretation should be addressed by applicants in the commission. First – and this is the significant part – construction or interpretation of award provisions can only be made by considering their meaning in
25 relation to specific facts. It is futile to attempt such an exercise in any other way.

President, consistent with that requirement, the union forwarded to the employer's representative, Mr Durkin, a proposed statement of facts in relation to this matter, and I'd seek to tender a copy of that.

30 PRESIDENT: Thank you. **EXHIBIT AWU.1.**

MR FLANAGAN: President, if I can take you to AWU.1, you'll see that there is correspondence there dated 21 December last year in which we referred to our previous correspondence, and in the previous
35 correspondence we seek the agreement of Mr Durkin on behalf of Mr Westlake to the attached statement of facts.

PRESIDENT: So we're only talking about a single respondent are we?

MR FLANAGAN: That's correct. The dispute concerns whether or not Mr Oliver who was employed by Mr Westlake essentially spreading fertiliser but in terms of the scope of duties that's dealt with in the agreed facts, the question is whether or not the activities that Mr Oliver and his employer, Mr Westlake, were engaged in are within the scope of the Farming and Fruit Growing Award.

PRESIDENT: Okay, so it's a specific incident -

MR FLANAGAN: That's correct. That's right.

PRESIDENT: - that we're looking at?

MR FLANAGAN: That's right. Now as I've indicated there's been no response to the proposed statement of facts by the employer's representative, indeed nor has they have seen fit to appear this morning in respect of the matter. So to a significant extent we've been frustrated in the processing of this application, however what we would seek given that there is no appearance by the employer, is for an alternative date to be allocated to the matter, but for it to be understood that unless through discussions with the union prior to the next hearing date there is any alteration sought to the agreed statement of facts which are attached in AWU.1, we seek that those facts be taken as correct and will seek to proceed *ex parte* in respect of the application so that it can be brought to a conclusion.

That's our application, president. I think given the significant delay which has occurred to date, that's not an unreasonable request. It's been on foot since February of 2000. It's now April 2002 - that's a significant period of time - and this is only the first step of we would hope, two hearings; firstly this hearing to determine whether or not the Farming and Fruit Growing Award is applicable to the work in question here and if we are successful with that application then a second hearing in respect of recovering of unpaid entitlements.

PRESIDENT: That's in respect to Mr Oliver?

MR FLANAGAN: That's right.

PRESIDENT: Yes.

MR FLANAGAN: So in terms of this application, given the employer and through their representatives have not responded in terms of either accepting or rejecting the proposed statement of facts in order for the matter to proceed, we think it's not only appropriate that those facts be taken as correct if there is no position put the contrary, but also that it should proceed *ex parte* if there is no appearance on behalf of the employer.

PRESIDENT: What I will do, subject to hearing from Ms Roney who is sort of left out of this at the moment, is I'll issue some directions,

first of all addressing the statement of facts and re-listing the matter and if there is no response or appearance by Mr Durkin or someone representing the company, the matter will be heard and determined in their absence.

5 MR FLANAGAN: Thank you, president.

PRESIDENT: I think it's been hanging around long enough. Now do you know why you're here?

MS RONEY: Well, Mr Durkin hasn't showed, but I suppose you'd say we're on Mr Durkin's side as far as this matter goes as far as the
10 interpretation goes.

PRESIDENT: So you'd be intervening -

MS RONEY: Yes.

PRESIDENT: - in the matter when it finally goes ahead as to the interpretation.

15 MS RONEY: We will - we will be.

PRESIDENT: You're a party to the award are you - your organisation?

MS RONEY: We are.

PRESIDENT: Yes. Okay. So you're just adopting the normal
20 interveners role?

MS RONEY: We will, thank you.

PRESIDENT: You're not representing Mr Durkin?

MS RONEY: No.

PRESIDENT: All right. Did you want to put anything else at this
25 stage? We're sort of not going anywhere today by the looks of it.

MS RONEY: No, no, we'll leave it till the next hearing thank you, president.

PRESIDENT: All right. Okay. Unless Mr Flanagan has anything else he wants to put.

30 MR FLANAGAN: Nothing further thanks, president.

PRESIDENT: I'll adjourn the proceedings to a time and a date to be fixed. There will be written directions forwarded to all parties and, as indicated, if on the next occasion there is no appearance by Mr Durkin

or someone representing the company, the matter will be heard and determined in their absence. This matter is adjourned, thank you.

HEARING ADJOURNED SINE DIE 10.53am