

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 4927 of 1994

**IN THE MATTER OF** an application by  
the Tasmanian Chamber of Commerce  
and Industry Limited to vary the  
Cement Makers Award

re Definitions, wage rates

COMMISSIONER IMLACH

RAILTON, 13 July 1994  
continued from 19/5/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER IMLACH: Any change in appearances?

**MR P. TARGETT:** Yes, commissioner, appearing with me for the TCCI in lieu of **MR NEVINE**, is **MR ARNOLD**.

COMMISSIONER IMLACH: Anyone else?

**MR K. BECKER:** If the commission pleases, a change of appearance; **MR TONY RUSSELL**, appearing for the EPU along with myself.

COMMISSIONER IMLACH: Thank you.

**MR J. LYNCH:** I'm appearing with **MR RODNEY MCCARTHY** for the Transport Workers' Union of Australia.

**MR B. BEST:** If the commission pleases, appearing with me for the CFMEU is **MR T. SUTCLIFFE**.

COMMISSIONER IMLACH: Thank you. Right. Now I think we're all aware of the main purpose of today's hearing is to finalise the agreed proposal put by the confederation - by the chamber and I think I'd ask you, Mr Targett, to lead off, please.

**MR TARGETT:** Thank you, commissioner. Just perhaps to put a couple of things into perspective following the last hearing before you. Basically we had reached agreement between the parties and it was a matter of the parties then sorting out the final version of that agreement in a form of words which would reflect not only the award variations but in addition to that, the points outside award variations that had been agreed.

Subsequent to the proceedings, I provided documentation to each of the parties as well as a courtesy copy to the commission so that the commission was kept advised of what was going on, and I had responses from some unions who had a couple of difficulties with what I put into documentation. Those matters were addressed by myself and further documentation issued and we then, as I understand the situation, reached a position where we then had agreed award variations, plus agreed explanatory notes which were not to form part of the award - by their very nature they can't, but certainly they explained those issues in addition to award matters which had been agreed.

Today's proceedings, as I understand the situation, are to formally request that the commission vary the award in the terms that had been requested by the parties in the documentation that I have provided.

Before I do that, there is another matter which needs to be put - needs to be raised and it needs to be raised as a

consequence of technicality raised with me by the commission in relation to the excess payments matter which were included in the documents provided to all parties. Before anyone gets too excited, I assure everybody that I'm not seeking to remove the excess payments from the arrangements that we've already reached agreement on, but it's been raised with me that there is a technical problem in leaving the excess payments amounts in clause 8 - wage rates because the wage fixing principles in fact require quite specifically that any excess amounts be included in a separate clause.

I did discuss the matter with the commission informally to see whether we could in fact treat the principles with contempt over this particular issue, and as usual the commission wouldn't allow me to do so. The - which then left me with the difficulty of how we actually deal with those excess payments. I believe I've come up with a method and I have some documentation which no-one else has a copy of as yet, so despite the fact I brought a heap, I don't know whether I have enough to cover a cast of thousands. You may have to share copies as you go around.

COMMISSIONER IMLACH: Right. I believe that would be T.2, Mr Targett. Is that correct, do you think?

MR TARGETT: I'm sorry - T -

COMMISSIONER IMLACH: T.2. We had T.1. That'll be marked Exhibit T.2.

MR TARGETT: In addition to that document, there is another document, commissioner.

COMMISSIONER IMLACH: The second amendment document will be labelled T.3.

MR TARGETT: In handing those around could you make sure the union officials all get - union officers get a copy of those documents, please?

COMMISSIONER IMLACH: Mr Targett, before you proceed with that; going back, if I may, to T.1, just a technicality I expect, was to be inserted in lieu of page 22, but the final document proposal you put forward is rather different. Can you explain that?

MR TARGETT: .... incorrect numbering, commissioner.

COMMISSIONER IMLACH: So the items in that T.1 would appear in your proposed document, is that right?

MR TARGETT: Can I just make sure we're talking about the same document, commissioner?

COMMISSIONER IMLACH: Yes.

MR TARGETT: T.1 is - yes, that is a - if you ignore the page numbers, that's to replace the actual page within the wages section of the original document.

COMMISSIONER IMLACH: We'll just go off the record for a minute.

OFF THE RECORD

COMMISSIONER IMLACH: Mr Targett is proposing that his document that's been circulated since we last met, become his amended application for the new award. He is going to give us a couple of more amendments in a few minutes, but he is putting that forward. I propose to accept that. Does anyone have any objection?

MR TARGETT: Just before you proceed, commissioner, that was the document I issued under a memorandum dated the 3rd of June and I subsequently provided everybody on the 6th of July with 2 pages - 2 replacement pages.

COMMISSIONER IMLACH: Yes. Adult employees -

MR TARGETT: Which was also covered by a memorandum and the issues that those two replacement pages addressed, was we included relating to adult apprenticeships which was done as a result of discussions between ourselves and the union and the second issue that we addressed was the wage rates for maintenance employees. When I provided the document I put in the additional classifications in the definitions clause but I hadn't put in the additional levels in the wage rates clause and that's the only alteration in those two pages.

So the document supplied under the memorandum of June - sorry, the 3rd of June and the two - including the two replacement pages supplied to everybody under memorandum dated 6th July would become my application and I so request.

COMMISSIONER IMLACH: Yes. Well I have all those documents. I presume everyone else has - does and it is proposed that that be part - become the changed application which I understand is agreed but we're yet to hear that. Now, are we all clear? Yes. Well I'll accept that, Mr Targett.

MR TARGETT: Thank you, commissioner. The next matter I believe we should address becomes the document we've now provided as Exhibits T.2 and T.3. But I firstly deal with document T.2. T.2 is in fact a repeat of the - of my proposal to alter clause 8 - wage rates and the only variation in T.2 to that which I have previously supplied is that I have

deleted the excess payments column from that document - from that clause and as a consequence of deleting the excess payments column, I have reduced the weekly wages column by that amount. And you will note, and to illustrate the point, if I refer to document T.2, 'Production Employee Grade 6 - 100% wage relativity' - if you go to the total weekly wage column, it is '\$425.20', which fits in with the standard amounts, and all of the other weekly wage amounts in all grades reflects the standard because I have now removed the weekly wage - sorry, the excess payment and it is now the standard weekly wage. That is the only alteration to my previous proposals.

If I now refer to document T.3. Document T.3 is a proposal to include a new clause 9 and I have entitled that clause 'Additional (Excess) Payments'. I have called it that to ensure that because of the commission's requirement that everything be alphabetical these additional wages appear straight after the wage rates clause and that's the only way I could do it.

The amount contained in that proposed clause 9 are the exact amounts that were previously in the excess payments column that I have now removed and I have put, in the beginning of that clause:

An employee classified in accordance with this award shall be paid the following excess payments in addition to the wage rates contained in clause 8 - Wage Rates.

That is to ensure that it is clear that the amounts contained in the excess payments clause or the additional excess payments clause is a payment that must be paid in addition to the weekly wages clause. I stress that this - and I prefer these documents on the basis of - subject of errors and omissions because it was a last minute thing following last minute advice.

COMMISSIONER IMLACH: Yes.

MR TARGETT: Driving down here this morning and thinking about the documents that I was carrying with me, it became evident that I have made an omission and that is that when you refer to the juniors clause or the apprentices' clause and look at the percentages of - to determine what a junior or an apprentice will earn, they will go off the weekly wage rate which is now less the excess payments. That is not the intention, so I have to make a minor alteration to the juniors and apprentices clause to ensure that the percentages apply not only to the weekly wage - what is now the weekly wage in clause 8, but also the excess payments clause. I know it's messy. I don't want it, but I have no option.

COMMISSIONER IMLACH: Would you like to just leave it at that for a minute, Mr Targett?

MR TARGETT: Yes, I will.

COMMISSIONER IMLACH: I'd just like to say that - and the commission as you are all aware, is bound by the guidelines has adopted them and that guideline is under the minimum rates adjustment heading, subclause (e). It requires that excess amounts be supplied in a separate clause. I'm in virtually the same position as Mr Targett and yourselves I would hope, but I would prefer to be where it was originally proposed, but the rules and I have to abide by them, and as I see it, there's really no change in the end result, and it won't be my responsibility I presume, but it seems to me that if you proceed then to an enterprise award which is possible, that that can be included, but under the present system and in the format that we have it at the moment, that's the way it has to be done.

So, Mr Targett is making that proposal in conjunction with presenting the amendments he has tabled, T.2 and T.3. Has anyone got anything to say or any objections to that proposed amendment?

MR COOPER: Commissioner, if I just may?

COMMISSIONER IMLACH: Mr Cooper?

MR COOPER: With respect to the amendments that have been put, we don't have any objection to the application being varied to include this in the subject matter, but we would like to have some discussions about the implications of splitting that up in terms application being - previously it was all purpose and we'd like to have some talks about. Whether we do that on the record, off the record, I don't really have a problem.

MR TARGETT: I'm happy to state quite categorically on the record that we do not use this as a mechanism to remove the total amount which is the combination of clause 8 and clause 9 by - clause 9 being the all purpose amount and the very clear intention of this is to not resile from that position. The all purpose amount is the combined clause 8 and clause 9 which is the combination of the weekly wage rate contained in clause 8, as well as in addition to that, the excess payment amount contained in clause 9. That would become the all purpose amount.

COMMISSIONER IMLACH: Now that's on the record. Anyone else got anything to say?

MR COOPER: Well, commissioner, it's fine to have it on the record, but we should we do something about - that's why I suggested that we talk about it. Should we do something to have it in the award because the award's a legal document.

MR TARGETT: Well I have no problems with that, Mr Cooper, because I've already said we already have to address the issue of the words in the junior and the apprentices clause because as I realise when I was coming down this morning, they refer to weekly wage and we're going to have to make some minor alternations to ensure that they also get a percentage of the excess payments and we can address that as part of that process. To me, I can provide the commission with just a minor amendment to the order.

COMMISSIONER IMLACH: Perhaps - or could I suggest that let us get the formalities over - in other words, Mr Targett's general proposal and so long as everyone is agreed, subject to the point that's been made which I think is fair enough, we'll adjourn for that paragraph or whatever to be drafted and then we'll return to have that endorsed. Fair enough? All right?

Anyone else got anything to say? Now what I am putting to you formally is that the amendments T.2 and T.3 be accepted. No objections? Subject to that later amendment .... provide for the excess payments to be an all purpose payment. Have I got it right, Mr Targett?

MR TARGETT: Yes.

MR HILL: Could I be convinced that the apprentice rates are accurate during that process too? I think they're right. I'm not absolutely sure. I've not checked the apprentice rates in the draft.

COMMISSIONER IMLACH: Well you can take the opportunity when we adjourn to do that.

MR TARGETT: Yes.

MR HILL: Thank you.

COMMISSIONER IMLACH: And then when we return, if there's any serious problem, well that has to be addressed before we finalise it all. Thanks, Mr Targett.

MR TARGETT: Sir, we have the document which forms part of the application which is, as I understand, the position - subject to the qualifications raised by Mr Cooper and Mr Hill in relation to those couple of small matters - that is, from my perspective the agreed position, subject to confirmation by the unions. That includes the explanatory document which contains a number of issues that we have agreed, including a total 4.1/2 per cent wage increase under the enterprise

bargaining agreement principle which specific dates of application of those amounts. I will now - and I would, once the commission accepts the variations to the award, I will be sending to the unions a document which I would seek to have subsequently registered as a section 55 agreement enshrining that 4.1/2 per cent. We've already included in the document which now forms part of the application the explanatory document which quite clearly says that the 2 per cent has an - first 2 per cent has an operative date of the first full pay period on or after the 19th of May 1994, which is a retrospective date; we don't resile from that, but I have given undertakings to the unions that all this being settled, we will register this - that arrangement in relation to the 4.1/2 per cent as a section 55 and I would proceed to do that as a matter of priority as soon as the commission advises acceptance of the variations.

I don't intend to go through all of the minute details of these applications; I think that has been done enough over the last couple of years.

I would, on that basis, propose to ask the commission to accept the variations as has been put to it, subject to the qualifications raised.

I believe that all of the proposals contained in the amended application are within the wage fixing principles, including the matter relating to excess payments now; and, in addition to that, I believe that the public interest is well served by the commission accepting the proposals contained in my application because it then puts in place a wages and classification structure for this particular award which, in our opinion, is as good as there is in any award within this jurisdiction, and serves the industry well for the future as far as the changes that have recently been undertaken and may occur into the future.

I would ask that the operative date of the variations be the first full pay period on or after the 19 May 1994.

I would stress very strongly that it is not my custom or my practice to agree to retrospective operative dates, but there was a very clear undertaking given to the unions that that would be the date upon which things would operate.

If the commission doesn't see fit to accept that operative date, I give an unequivocal undertaking that that is the date that will be applicable, anyway.

If the commission pleases.

COMMISSIONER IMLACH: Yes. Mr Targett, does that include the mechanics of penalty rates and all that in the meantime?



MR TARGETT: I don't believe that that is - because of the nature of the changes to the award - I don't believe there is an impact on that; but, certainly if we have an operative date of the 19th of May my very clear instructions from those instructing me are that that would be the operative date; so, yes, that would have to be the undertaking.

COMMISSIONER IMLACH: Is that how it was understood? I mean, it was the first thing that came into my mind.

MR TARGETT: Yes. Yes, that is my -

COMMISSIONER IMLACH: In other words, anything that's prescribed in this proposal operates from - is proposed to operate from the 19th of May.

MR TARGETT: That is correct.

COMMISSIONER IMLACH: Alright. Thanks, Mr Targett. Now, Mr Cooper.

MR COOPER: Just in terms of clarifying that last question, that is exactly the case, and it does affect people who have subsequently left the plant since the 19th of May up until today's date, and those people will also be affected by an increase in terms of payment that was made to them as part of their separation packages.

And that is clearly the case; that is clearly our understanding. The company advised us that they couldn't pay it until it was ratified in the commission and once it was ratified they would be clear to authorise that additional payment.

So it is clearly our understanding the operative date, 19 May, being the undertaking that was reached between the parties, does impact on earnings from the 19th of May for employees on site.

Just in terms the award variation, as we have already said we need to address some tidying up in terms of the need for Mr Targett to address the principles, and although it does become rather messy, I am sure that we can address that when we do bring to the commission the section 55 agreement to ratify the increases that will flow as a result of this award variation.

A couple of things that do need to be so, though, commissioner, for the record.

This process itself hasn't been without its moments of pain and anguish for the employees on site. It has been a very long process; it has been ongoing since my involvement with the AWU - and now the AWU-FIME - which has been in excess of 2.1/2 years.

I think that needs to be recognised by the commission that things like this don't happen overnight, and there has been a considerable effort on the part of all the parties and considerable frustration, and at times the need for industrial action.

All that having been said, we have now reached a stage where we have agreed to these changes, and that by its very nature, as Mr Targett has said, will result in an award variation that is equal to any that is currently forming part of the commission's awards that they do have control of.

In terms of some other matters that do need to be addressed, I think the commission does need to be aware that we have discussed a number of other issues as a result of this variation.

They do go to different sections of the plant in terms of multiskilling and in terms of putting in more efficient work practices.

One area that does stick in my mind is the area of the quarry where we do have to participate in ongoing consultations as a result of changes that are going to be implemented there; and, of course, the commission is aware the quarry itself in terms of this quarry on this site is going to be changed over time with the introduction of a newer quarry that is operating over the road.

So that does need to be borne out.

There is going to be created some multiskill positions that will affect our members, and they are in respect to the store. They are also in respect to the yard, and those things need to be looked at and developed.

There is some changes in the variation that do by their very nature require us to continue on with our commitment to do a work value in the central control room, and that is something that we have foreshadowed very early on in this piece, and that is something that is going to continue.

That, by its very nature, is a huge task. We have been involved in that and the information that has been provided to us is fairly significant.

That work value will be conducted by the union hopefully in the near future, once the information that we have is organised in a manner that can be presented to the commission so they can clearly understand the arguments. That is going to be undertaken, and I foreshadow that.

There are some problems in terms of translation still that we have addressed with the company that we have failed to reach agreement on, and our acceptance to this document, or award variation, today we don't give up our rights to pursue those problems with translation.

There is also a position in terms of the storepersons that has been put to the company that has still not been clarified, so our agreement today is subject to that matter being clarified as well, and if it can't be clarified, then obviously we will have recourse to the commission to settle that matter as well.

And I clearly put those things on the record so that the commission understands where we are coming from.

In terms of the variation, as I said it was one that did require considerable education of members through a series of meetings that were conducted prior to these proceedings.

The variation that has been put to the commission has been understood by our members, and I do say to the commission that this will allow for significant changes to be implemented on site by the company.

Notwithstanding that, there is also a need to recognise that this document also by creating generic classification structures will necessitate the implementation of training on site for a number of people, and the company advised that it is its intention to continue with that training.

So, subject to that flowing alright, things should happen on site in the manner that has been set out.

Now I do say to the commission that this document itself doesn't automatically give the company rights to do things that it couldn't do before, and I just foreshadow that we don't intend this variation to be used by the company to reduce the workforce or to use them in a negative manner.

What has got to happen is, this document is going to form the cornerstone or the base for us to go forward as unions and the company in terms of the section 55 agreement that will allow us to multiskill our people consistent with the principles, consistent with what we have been working for, for the last decade in terms of the restructuring process that has been undertaken by initiatives of the ACTU.

So I don't have anything further to add, Mr Commissioner, other than to say that we do endorse the application for variation, with an operative date of 19 May 1994, and subject to clarifying a few words that are attached to Exhibits T.2 and 3, we do endorse the application.

If the commission pleases.

COMMISSIONER IMLACH: Thanks, Mr Cooper. Who's next? Mr Best?

MR BEST: Yes, Mr Commissioner, we in fact notified the commission by correspondence of our position regarding the application to vary the award and the subsequent wage increases.

The position is that we have covered some substantial ground. There are some things in the agreement that we are probably not so happy with, but there are other things that will probably see some substantial improvement; and there are perhaps two areas that we would like to clarify at this stage with regards to our agreement.

Those two areas are the one in particular with regards to the explanatory document, and there is reference - if I come down that particular page, I think it is the fifth - sorry, the sixth asterisk - and it deals with clarification with regard to the multiskilled position to be established for the quarry requiring:

All employees currently working shifts to perform all tasks, e.g. crusher, truck, loader, and a position to be at Grade 6. Consultation will take place between the company, the unions and the employees to determine the best way to implement a multiskilling operation. If agreement cannot be reached the matter will go back to the commission for arbitration.

We feel that because of the significance of the changes, I guess immediately and currently from the negotiations that we have had and what this requires, and also the future needs and requirements that will eventuate with the dramatic changes that are likely to take place, that consultation be carried out in the form of a committee - a consultative committee - not dissimilar to any other consultative committees that we have in other industries, and some sort of broad charter be also looked at to look at these issues; bearing in mind that there has been quite a few differences in the past with coming to terms with changes and proposals that have been put forward by both the union and the company.

Rather than leave it in this broad description that has been put in there, that we would prefer to take it the next step and say to ourselves, well let's try and make it work and be more effective, and we would like to see that we move towards actually restructuring.

The first stage of that would be to construct a consultative committee and a charter to give some guided autonomy to best resolve the benefits for both parties of the subsequent

changes, and to hopefully set about a base to encompass the further significant changes that will come about.

The only other issue that we seek to have resolved is a translation matter, and this item I guess is one that has been around for some time. It is not an issue that we have necessarily had lengthy discussions over, but we nonetheless made the company aware with our correspondence - I think it may have been a period of 1 to 2 years' ago - with regards to the mobile crane.

The crane that is currently used is a different version to the original one in that it is constructed with a three-part boom, which requires additional skills in terms of the specific jobs it performs.

Rather than go into detail on that, I am not sure whether you want to hear submissions or carry out an inspection as to the operation, or what we had in mind, or whether you in fact want me to go through and put forward submissions on that item, Mr Commissioner. I'm at your disposal as to that.

COMMISSIONER IMLACH: Well, as I understand it, Mr Best, that part of the whole package (my word) is that if there is a dispute over such a thing that, first of all you will try and settle that between yourselves, and then it is available to come to the commission to be arbitrated.

MR BEST: Right.

COMMISSIONER IMLACH: Which I think is a reasonable thing to do because, just to take up what Mr Cooper said, there obviously will arise problems with any document as time goes by and, as I understand it, traditionally that's the way they are solved.

And, certainly as far as the commission is concerned, if this particular point that you are raising were to be brought to me that is how I would proceed.

I would inspect, hear the submissions, and then make a decision if agreement had not been reached beforehand. Now, that's my position, and I presume and expect that that would be the position of everyone else. How does that sound?

MR BEST: That sounds fair. I just wanted to get that clarified, because I didn't think that it was possibly the correct path to go into lengthy argument about it today.

COMMISSIONER IMLACH: No. As I understand it, that is already provided for, although I would like to hear from Mr Targett in due course when we get back to him on what he says about that.

MR BEST: Right. Yes, well, simply I guess the purpose of my raising it today is to put it on notice that it is still an unresolved matter. But I would not oppose further discussions with Mr Targett on that issue to see if that can be rectified.

The first issue, though, regarding the consultative arrangements regarding the quarry, would be a matter that we would like - well, we would like to have some sort of resolution to that today.

COMMISSIONER IMLACH: Yes. Well, as I understand it, Mr Best, you are putting forward two items - repeating that. One I have just answered.

This first proposal as to a consultative committee, again we'll hear what Mr Targett has to say about that.

But, I put it to you now, subject to those items, that what we are seeking is your union's confirmation of acceptance of the proposal.

As I understand it, what you're saying is - and I am putting the words in your mouth, so you can knock it back or not - that you accept the proposal, subject to these two items.

MR BEST: That's correct.

COMMISSIONER IMLACH: Now the second item as to the possible dispute over translation, I think I will put it back to you on the basis that it ought to be able to be investigated and decided on its own.

MR BEST: Yes.

COMMISSIONER IMLACH: And that has already been agreed, as I understand it, as part of this whole process.

MR BEST: Yes, I accept that.

COMMISSIONER IMLACH: So if I say that, we are left with that first proposal, the consultative committee. Do you accept all that?

MR BEST: Yes.

COMMISSIONER IMLACH: Good. Is that all?

MR BEST: Yes. Thank you.

COMMISSIONER IMLACH: Thank you, Mr Best. Mr Becker?

MR BECKER: If the commission pleases. Yes, sir, our union has been involved in these discussions for some time, and simply we seek that the commission endorses the proposals that

have been put forward by Mr Targett, and we reserve our rights to speak further after the adjournment on the issues that are still outstanding.

COMMISSIONER IMLACH: Thanks, Mr Becker.

MR COSTELLO: If the commission pleases. Mr Commissioner, we acknowledge that we do have a reserve right in the translation, and if and when required we will certainly proceed outside of this venue.

Mr Commissioner, we do endorse the document, and I think we'd endorse it subject to the amendment to T.2 and T.3, which would be required, and the verbiage that we need to put in place to that.

But, subject to those being acceptable, Mr Commissioner, we'd endorse the document.

COMMISSIONER IMLACH: Thanks, Mr Costello.

MR LYNCH: Mr Commissioner, the TWU is not unhappy with the proposal, and we endorse the comments of the previous speakers. We see no major issue at the moment.

COMMISSIONER IMLACH: Thank you.

MR HILL: Mr Commissioner, in previous proceedings before you I indicated on behalf of the AFMEU that a meeting of our members held in May of this year had accepted the proposed variations the subject of four conditions.

Only two of those conditions remain outstanding, and in my opinion only one requires ongoing attention.

The first matter still outstanding is a request that those skills acquired in addition to trades skills would only be used in an incidental and peripheral arrangement.

Mr Targett at the proceedings I referred to did indicate that the company had accepted that principle, and I don't wish to pursue it any further, only to have it on record that it was previously an agreement which had been reached.

The second outstanding matter is the commitment by both parties that the classification definitions and training modules will be finalised to the satisfaction of our members, the union, and the company indicated of course to them; which we have got no argument with.

But, having said that, and put those comments on record, I would confirm our acceptance of the proposed terms of settlement, and ask you, Mr Commissioner, to ratify the agreement. Thank you.

COMMISSIONER IMLACH: Thanks, Mr Hill. Is there anyone else?

MR COOPER: Mr Commissioner, could I just ask, before Mr Targett responds, just on behalf of my members could I seek a short adjournment for the purpose of having a discussion with the AFMEU on the extent of that proposal they have put, subject to their acceptance to this variation?

Can I just seek the indulgence of the commission for a short adjournment to clarify that, because I don't know whether I am reading it right, and before I make any statement on it I would like to clearly understand what is being put, because I would hesitate to say that we are not going to accept a position where pay increases for our members are jeopardised as a result of something that is being put now that I have had no notice of?

So I would like to seek an adjournment from the commission to clarify that position that is being put.

MR TARGETT: Just before that, commissioner, and I don't have a problem with Mr Cooper's request, but can I suggest that we do adjourn prior to my response and at the same time we can address those two or three issues that need to be addressed in relation to wording. I mean, it is only going to take 5 or 10 minutes.

COMMISSIONER IMLACH: That's exactly what I was going to say. Are you all clear on that?

In other words, we will adjourn now. The point raised by Mr Best settle between yourselves - the unions first, and then I would hope with the company, with the Chamber - and then also the terminology of those covering 'for all purposes' etc. Are you all clear?

Well, we will adjourn, and I am going to put a time on it because time is becoming limited - not yet - but it is becoming limited. So I am proposing half-past. Is that not too long?

MR TARGETT: That's fine.

COMMISSIONER IMLACH: Or not too short. We are right then? We'll adjourn until half-past 11.

SHORT ADJOURNMENT

COMMISSIONER IMLACH: Mr Targett?

MR TARGETT: Thank you, commissioner.



COMMISSIONER IMLACH: Order! Thank you.

MR TARGETT: I appreciate the opportunity - I've had the opportunity to speak to everybody about those issues in the adjournment and I believe that I can now provide you with solutions to queries that have been raised.

I'd firstly like to turn to Exhibit T.2, if I may, which is the amendment to the amendment, and I now make some amendments to that amendment to the amendment, if I may.

I firstly refer to the second page of T.2, and this goes to addressing the concern raised by Mr Cooper about the excess payment amount being an all purpose amount.

On the second page, subclause (2) 'Junior Employees', subclause (a) 'Administrative' in the second line I would like to include the additional words so it will now read, 'shall be the undermentioned percentage of the weekly wage contained in this clause'.

And excess payments contained in clause 9, additional brackets, 'excess payments'.

And I would like to delete the dollar amounts column and heading, so we just have the percentages.

And subclause (b), directly under, in the third line I would like that line to now read, 'percentages of the weekly wage contained in this clause and excess payments contained in Clause 9 Addition (Excess Payments)'.

And further down the page under subclause (3) Apprentices, the second line will now read, 'percentages of the weekly wage contained in this clause', and excess payments contained in Clause 9 - Additional (Excess Payments) for a maintenance employee Grade 6' - not Grade 5. There was an error there, in fact.

And I would seek to delete the dollar amount column and address some of the other issues that were raised -

COMMISSIONER IMLACH: Just before you do, Mr Targett, was that the sum total of the amendments ....?

MR TARGETT: Yes, it is.

COMMISSIONER IMLACH: Has anyone got any objection to all that - those amendments just proposed?

MR COOPER: No objection, commissioner. But there were some further amendments for T.3, wasn't there, I understand?

MR TARGETT: There is in T.3, yes. But that's just T.2 at the moment.

COMMISSIONER IMLACH: We'll take T.2 to start with. No objections. Well I accept those amendments.

MR TARGETT: Thank you. I now return to document T.3. In the preamble which says:

An employee classified in accordance with this award shall be paid the following excess payments in addition to the wage rates contained in Clause 8 - Wage Rates.

I would add to that sentence the words: The amount contained in this clause shall apply for all purposes of the award.

COMMISSIONER IMLACH: Any objections to that proposed amendment?

MR COOPER: No, commissioner.

COMMISSIONER IMLACH: No amendments, I accept that.

MR TARGETT: Thank you, commissioner. It's also been brought to my attention that there are a couple of consequential cross referencing amendments required, one contained specifically in clause 26 - Protective Clothing and Safety. It is merely a cross reference where it still contains a reference to Divisions A and B. That needs to be amended to whatever the cross reference - correct cross referencing ends up being after these variations.

There is also a similar reference in clause 33 - Tools of Trade. That needs to be altered to correct cross referencing subsequent to the variations that have been put in place.

In addition to that - I don't intend to do more than raise this. If any individual union has an objection then I'll drop it straightaway. But it's also been brought to my attention there is actually a redundant proviso in this award and it's contained in clause 32 - Sunday Work. The proviso in that clause is actually redundant. I would happily delete it because it's redundant but if anybody has a problem I'll forget it. It just seems to me if we are trying to tidy things up a little bit we could fix it. But to quote the proviso it says - I'll read the whole clause to put it in perspective; it's only very brief:

For all work performed by employees on Sundays, payment shall be made at the rate of double time.

I don't intend to touch that. It then has a proviso which states:

Provided that prior to 12 months after the implementation of the 38 hour week the hourly rate for overtime worked on Sunday shall be determined by dividing the appropriate weekly rate by 40.

Now as everyone is well aware the divisor for the correct rate is now 38 and it hasn't been 40 for I'm not sure how many years. It's a totally redundant proviso, and if anyone has a problem I'm happy to leave it there. It just seems a nonsense to me. So I propose that it be deleted.

MR COSTELLO: Mr Commissioner, if I may, I'd agree to that deletion because that was put there as a transition period for the 12 months during the transition to the 38 hour week and is now redundant anyway.

COMMISSIONER IMLACH: Thank you, Mr Costello. Are we all clear on that? Well that will be deleted. No objections? Right.

MR TARGETT: If I now seek to address some of the other matters that were raised by the unions. And I'll go round them roughly in order. The AWU raised a number of issues and I don't intend to address them all. But certainly one that they raised - and I'd seek to confirm - is that there are still a couple of matters with the AWU in relation to translation. And certainly the company's position is that the translation matters will be dealt with and if we cannot reach agreement on the matters of translation we would have - we understand that it can come back to the commission for arbitration, if necessary.

In relation to other comments made by Mr Cooper, I would simply state that the position of the company quite clearly is that with the variations to the award and the new structures put in place the company will seek to utilise classification structures which will provide the best benefit for everybody concerned and all matters will be done in consultation with the employees and the unions anyway. So I don't believe there are any matters which the AWU should be concerned about in that issue.

Referring to the issues raised by the CFMEU, I would merely - firstly pick up on the issue of the translation in relation to a mobile crane. And I certainly adopt the views expressed by the commission and I've advised Mr Best that we're happy to discuss that matter and if we can't reach agreement we accept that Mr Best has the right to bring it back to the commission for arbitration, if necessary.

In relation to the issue he raised on consultation regarding the quarry and the consultative committee, the position of the company is - and I state it quite categorically - there will

be consultation in relation to the remaining matters in the quarry. The consultation process, the company are happy to discuss the process with the unions to determine the best way to effect that. The company are keen that not only the unions be involved in the consultative process but also the employees, and the best position from the company's point of view is that all employees that are affected be involved in the discussions or in the consultations. There will be no unilateral applications. It will be done by a consultation.

Having said that, if as a result of those consultations agreement cannot be reached, the company, as stated in the explanatory document, does have - reserves its rights to come back to the commission for the matter to be arbitrated.

In relation to comments from Mr Becker, the only thing - and I must admit I think that I neglected to make this comment and I do so now - there was an undertaking given that employees will be provided with letters which quite clearly sets out their classification, but also that if they do have a remaining over award payment as a result of the changes to the award, contained in that letter will be the clear stipulation that the company is not going to take that amount off them because we have maintained consistently that no-one will have their incomes reduced as a result of these variations. And those letters will be circulated ensuring that that undertaking is put in place.

Having said that, I would also make the point that the AWU - some AWU members, I believe, were given some letters at some stage in the past. As a result of further negotiations those letters have now become in fact redundant. They will be reissued with what is now the current position.

In relation to the ASU, I would confirm - and it does reflect back to comments also raised by the AWU - that the 2 per cent and the 2-1/2 per cent increases that were - that are to be put in place by the enterprise bargaining agreement do apply to the all purpose rate, which is the combination of the weekly wage and the excess payments. Sir, that certainly is the position, so that it's on the record.

In relation to comments made by Mr Hill from the AFMEU, the additional skills being used only as incidental and peripheral, we confirm that that is the agreement that's been reached and I put on record that that is how the company have approached the discussions and will continue to apply the variations that have been put in place. And we also confirm that it is the company's understanding and agreement that the training modules do need to be finished and need to be finished to the satisfaction of all parties concerned, the union, the employees and the company.

So I believe that addresses all the issues that have been raised satisfactorily. So I once again confirm that we would like this matter to be accepted by the commission with an operative date of the first full pay period on or after the 19th May 1994.

COMMISSIONER IMLACH: Thanks, Mr Targett. Now as I understand it - and I'll go round and confirm with each individual representative - the proposal has been agreed subject to the matters raised and the discussions on them, and Mr Targett's confirmation or otherwise. That being the case, as I said, I'll check with each representative before we finally close it. What's been agreed today formally fully will be - except for those items that are not normally prescribed in awards but have been the subject of settlement and agreement, will become the new amended award. And the operative date will be the 19th May 1994, the first full pay period occurring thereafter.

Now I'll just go round clockwise. Mr Lynch, what's your position?

MR LYNCH: Sir, since we've had the clarification from Mr Targett I have no further questions. I was a little concerned initially about the consultation process and the quarry. I understand that's under way and that will continue in the future, so that was my only reservation. I'm quite happy to see the agreement ratified.

COMMISSIONER IMLACH: Thanks, Mr Lynch. Mr Cooper?

MR COOPER: Yes, commissioner, in respect - just a procedural thing. I wasn't quite sure whether Mr Targett amended his application to include those variations to clause 28, 33 and 32. Was that in fact what happened?

MR TARGETT: Yes.

COMMISSIONER IMLACH: Yes, I do believe we went through that process but nevertheless I'll put it now that those technical amendments, mechanical amendments be effected. And I've accepted them as purely that, corrections and amendments. Yes. Anyone object to that? Right, that will be done.

I will say that when we go back to the commission and draft up the final document any errors or omissions will be amended. But if there is anything that affects the import or the meaning of the award that will be referred to the parties before such a process is done - carried out.

MR COOPER: I understand that. Commissioner, in terms of those amendments that were made by Mr Targett in respect to T.2 and T.3 and subsequently the award, and that his answers in respect to the questions that were raised, we have no

objection to the variation, bearing in mind the operative date being the 19th May 1994. If the commission please.

COMMISSIONER IMLACH: Thanks, Mr Cooper. Mr Becker?

MR BECKER: I accept the proposition as been put by the parties.

COMMISSIONER IMLACH: Thanks, Mr Becker. Mr Best?

MR BEST: Mr Commissioner, I understand with what Mr Targett has responded that we have a full commitment from the company to implement a consultative process with regards to the quarry and to have full discussion and proper consultation with regards to those changes. And also I understand with discussions that I've had with Mr Targett that our position regarding the crane - the correspondence that was sent to Mr Targett may have been incorrectly titled from our office and I think there's a need for us to have further discussions to see if we can rectify that situation.

COMMISSIONER IMLACH: So you confirm the proposal?

MR BEST: Yes.

COMMISSIONER IMLACH: Thanks, Mr Best. Mr Costello?

MR COSTELLO: Thank you, Mr Commissioner. I believe, Mr Commissioner, that the matters that were raised and discussed through the adjournment have met the parties and they are in total agreement to those matters being raised through that adjournment. And as such we would endorse the.....

COMMISSIONER IMLACH: Thanks, Mr Costello. Mr Hill?

MR HILL: On behalf of the AFMEU, sir, I confirm our acceptance.

COMMISSIONER IMLACH: Thanks, Mr Hill. Well that being the case I'd like to congratulate all the parties on reaching agreement over such a long period. But I think that in itself can be taken as a good sign in that many matters have been raised and discussed and the final document ought therefore to be a much better document than if it were done quickly in the beginning.

And I'm pleased also naturally that that is able to be done because, as you know, we're handing over to Commissioner Gozzi today. And in that context - and I refer to the matter of consultation - just as an example, all these matters are subject to - if they end up in dispute each one individually may be brought at any time to be arbitrated on one way or the other. So long as you have an award available or even without an award, that process is available at any time.

Are we all clear then? Thank you. Well I confirm that this - the proposed amendments as agreed and settled will be incorporated and the award amended operative from the first full pay period to commence on or after the 19th May 1994. This matter is closed. Thank you.

HEARING CONCLUDED