

**IN THE TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

**T. No 226 OF 1985**  
**T. No.227 of 1985**

**IN THE MATTER OF** applications  
by the Australian Workers' Union  
to vary the Agriculturists Award  
and the Horticulturists Award

re scope of award and scope and  
title of award respectively

COMMISSIONER WATLING

HOBART, 14 January 1986

**TRANSCRIPT OF PROCEEDINGS**

(RESUMPTION)

COMMISSIONER WATLING: I will take appearances please.

MR HANLON: **HANLON, D.P.** I appear for the Australian Workers' Union.

MR FRUIN: If it please the Commission, there is a change in appearances. I appear on behalf of the Tasmanian Chamber of Industries, **FRUIN, M.**

MR DURKIN: If it pleases the Commission, **DURKIN, D.**, Tasmanian Farmers and Graziers (Employers) Association.

COMMISSIONER WATLING: Thank you. Mr Hanlon, are we going to deal with these matters separately? Are you going to speak to them separately?

MR HANLON: Yes, sir. There is only one matter before us this morning. I will come to that.

The matter before us that we wish to deal with this morning is T.226, which is the Agriculturists Award. And just for the purposes of the record, the matter first came before the President when two applications, T.226 and T.227 of 1985 were before the President in regard to section 33, subsections 1 and 2; whereby the parties were seeking to change the scope clause of the Agriculturists Award and the Horticulturists Award for the purposes of rationalizing the two industries.

That matter then came before the President for decision as to two exhibits that were placed, as part of the application by the Australian Workers' Union, as to proposed scope clauses for the two awards.

The President referred the parties into discussion for the purposes of agreeing, if possible, between the parties, as to the form those words should take.

Those discussions have gone on between the Tasmanian Farmers and Graziers and the Tasmanian Chamber of

MR HANLON:

Industries. And the parties have reached agreement as to the Agriculturists Award.

Now that has been done. It is now possible for those persons who will be excluded from the Agriculturists Award to meet and agree, or suggest alterations to our draft, for the proposed new Horticulturists Award, if I could refer to it in that way.

COMMISSIONER WATLING:

I think you are seeking to change the name of the Horticulturists Award too, aren't you?

MR HANLON:

As well. Yes. And because of the narrowness of the new Horticulturists Award, then it is best that the industry determine how it would like itself to be known rather than - or to have some influence on that - rather than the union determine, solely, how it should be known, as it is a description of an industry.

So that this morning's appearance is for to present to the Commission a scope clause that is agreed, for decision by the Commission that it is in agreement that the scope clause should be altered.

We would not be seeking a date of operation as part of that decision. And the purpose for that is to enable the parties then to go on and draw up the various clauses to the award; select an operating date and, at the same time, complete the process with the Horticulturists Award at the same time, so that they would come into being with some notice to the parties or the industry and with an operating date when we would next be before the Commission.

COMMISSIONER WATLING:

So you are looking at a decision on a threshold matter on the scope of the award only?

MR HANLON:

Yes, sir. I tender a copy of that proposal.

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COMMISSIONER WATLING: Make that Exhibit H.2.

MR HANLON:

This clause is similar in form to the one that accompanied our application, but the head-note has been altered to more clearly reflect what the operation of the industry of agriculture is.

The parties have conferred and this is now the agreed position of the three parties who appeared in the last hearing. And the description is that of agriculture:

"... including the operation of equipment and the carrying out of processes involved in the production, harvesting, processing and packaging of agricultural products, and without limiting the generality of the foregoing that is to say in or in connection with the following agricultural enterprises:"

There are a wide range of enterprises. They are; the ones that are named are the significant enterprises, whereby a person may carry on one of those as a single enterprise. But the great majority of enterprises may carry on one or more.

The new scope clause embraces part of the old horticulture and all of the existing agriculture and part of the poultry and marine products.

Poultry production prior to 1981 was carried out under agriculture. It then moved under the poultry, marine products, so that it created confusion with smaller operators who just raised birds and eggs, whereas the larger production, such as Glenila, have an integrated process, so that it caused no concern. So that it is the intention now to bring poultry production back under agriculture and, in the near future, to lodge an application to delete



MR HANLON:

poultry production from marine products. So that the Marine Products Award is solely that of marine products. And the company of Glenila may be dealt with as a separate matter, as a single integrated company engaged in bird and egg and processing. That is just for the benefit of the Commission, so that you can see where we are going in that area and, again, that is the agreed position of the parties.

This scope clause will do away with the confusion that occurs with individual employers or farmers who may be employing people under more than one award, but the individual may be the same individual. But because of the nature of the mixed farm, a person could be employed in dairying; when the fruit season comes along he could have been picking soft fruits and covered by horticulture. A person could have employed a farm apprentice and that person would have been covered by the Agriculturists Award, but the person overall is engaged in agriculture. And the definition in the Horticulturists Award covers the following industries and in the agriculture it said: "Other than those covered by the Horticultural Award" which, in itself, created confusion.

The parties have been negotiating since 1982 to overcome these difficulties. And Exhibit H.2 is the agreed position and we would be seeking for the Commission to determine that that clause is acceptable and that the parties would return with those other matters that form part of the dispute, for consent or final determination and the determination of a date at a later date.

COMMISSIONER WATLING:

Mr Hanlon, can I just ask you one question?

I take it that this still is a

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COMMISSIONER WATLING: private sector award and no one in the public sector will be covered by this award through the change in the scope?

MR HANLON: No. At the present time the Department of Agriculture takes rates of pay from this award for the determination of farm hands. There is some argument. There was an agreement up until the mid-seventies between the Australian Workers' Union and the Department of Agriculture that the employees were 'day labour' (to use a term).

The Crown Attorney at that time said, "No, these persons are not day labour, they are persons covered under the Public Service Act."

Now with the new State Services legislation, which now applies to the Department of Agriculture - all employees - the moment that the Agricultural Award is tidied up we will be proceeding then to place those employees under an appropriate award, either within the existing Public Service Board or the new one.

COMMISSIONER WATLING: The public sector award, you mean?

MR HANLON: The public sector award. Yes. There is also a process going on involving the major Federal award employing government labour. That is in the process of reaching finalization, to tidy up all employment in the Department of Main Roads, Forestry, as part of that process.

So it will not be the intention to involve any government employees in this award - it will be a private sector award.

COMMISSIONER WATLING: Mr Durkin?

MR DURKIN: The comments we would just like to add, in relation to our agreement of the scope clause, are that the title of the award "Agriculturists" and the

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DURKIN

MR DURKIN:

very broad scope we have given it, is not a new idea - it goes back to 1983 when the Department of Labour and Industry recognized problems in the area of the Agriculturists and Horticulturists Award standing together. And they suggested a scope clause very similar to the one we have come up with.

Farmers generally have a problem with this dual award situation, in that it is quite easy to have a combination of enterprises on a farm which are covered by both these awards; for instance, vegetable production and dairying. In a situation like that (and taking into consideration section 53 of the Act) we can have the situation where, for part of the time, even though they have common rates of pay, we could have an employee being covered by different sets of conditions, depending on what particular enterprise he was working on at the time.

So, the whole idea is to create the one Agriculturists Award and if there are to be differences between the enterprises, even in the condition area, for instance, in the hours of work for dairymen, then we approach those under the guise of the one award.

It is also preferable to get the scope clause decided upon for two reasons. One is that if we can't reach agreement on the conditions, we propose that it may be necessary for the differences to be arbitrated and may also necessitate inspections. So it would be nice to know what it is we are going out to inspect, according to the scope.

Secondly, it is very important for us to have a scope in place, so that in our education programme, with our own people, it is very difficult to convert them from one award to another.



MR DURKIN: So just in supporting Mr Hanlon's application and the agreed document, I place those comments on record.

COMMISSIONER WATLING: Good. You are not seeking to change the title of the award though, are you?

MR DURKIN: No, not the Agriculturists.

COMMISSIONER WATLING: What do you perceive as poultry production?

MR DURKIN: I understand poultry production to be the growing of "chooks" (for want of a better word) for final slaughter. And then you have got the other side of the poultry industry and that is the egg production.

Just to continue, I understand that to take place in two ways: One is on a grand scale like Golden Poultry et cetera and Glenila and then on a smaller scale where some farming enterprises do; we have a quail farm - we produce quail for production which we put down to be poultry, although some people say it is game.

COMMISSIONER WATLING: So raising of livestock - you wouldn't see raising chickens as raising of livestock?

MR DURKIN: Yes. This whole definition of livestock has been given a very wide definition by a lot of authorities, including the dictionary. I would say that livestock may well - could well - be seen to be covering chickens.

COMMISSIONER WATLING: And poultry production just covering eggs? Egg production or both?

I think Mr Hanlon is anxious to have some response to that as well.

MR HANLON: You can raise fowls so that they are only raised for processing. But it is possible to raise birds that will end up on the table (if I can put it that way) but they are primarily raised for egg production. But you

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HANLON



MR HANLON:

get the situation where, I may be in the business of egg production, but then I sell my birds to a producer for the purposes of disposing of them.

So that you get people whose primary business is egg production, but the birds then still end up in some sort of process operation. And you get people who then raise birds solely for the purpose of having the bird at 12 weeks suitable for Kentucky Fried and similar operations. So that they are separate functions, but in some instances they are combined ones. So that poultry production takes care of the person who is just raising eggs and the person who is just raising birds.

I accept the point "livestock production" covers any stock that is live. It has a general reference meaning more in the line of cattle, sheep, goats and deer.

COMMISSIONER WATLING:

I just wanted to be sure that the parties had an understanding of the poultry production. Because, obviously, if I was to accept this proposal, it would be an argument at a later date to vary the other award of this jurisdiction, as you have pointed out.

MR HANLON:

There have been preliminary discussions with the Chamber of Industries on the desirability of having a separate Marine Products Award, as the two industries are not compatible. Therefore, it then means either you leave chicken production on its own or you return it to where it was in 1982.

The dominant person engaged in that is Golden Poultry who have an integrated industry of both farms - private farms to raise bird production. They also have employees who go from farm to farm, with no fixed place of work, who catch birds. And they have their factory enterprise. And therefore they are

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MR HANLON:

best covered as an integrated, separate industry and the marine products. So that we are not anticipating any difficulties from any part of the industry, because we are returning it to where it was prior to 1981. And we are meeting the desires of the fish industry. My understanding is, as I have been advised, that that is acceptable to Golden Poultry.

COMMISSIONER WATLING:

Is there any special qualifications to become a bird catcher?

MR HANLON:

Other than the ability to work at night?

MR DURKIN:

Could I just add, Mr Commissioner, that this area of what is livestock is not going to go away. Because overriding all these discussions (and I think it is only fair that you are aware of a further problem we have) is that we do still have a problem between determining whether a poultry farmer, a dairy producer, comes within the scope of the Pastoral or the State Ag. Award, or poultry, for that matter. So we feel it is going to be a lot easier to determine that argument once we have sorted this State argument out and produced the one (as we call it) Mixed Farm Award.

The D.E.I.R. have told us in quite clear terms that the term "livestock" can cover just almost anything that moves. That produced quite a stock of documentary evidence to support that. So I don't think the problem of whether a 'chook' or a dairy cow is livestock, then the terms of another certain Federal award will go away either.

COMMISSIONER WATLING:

I suppose it would even pick up those people that were raising dogs - kennel people?

MR DURKIN:

We don't have any members in that area, Mr Commissioner.

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HANLON

MR HANLON:

It could be said that I would question whether there is another award of the Commission's that applies to kennels. The Miscellaneous Workers' Union covers persons who are employed in kennels. Whether there is a distinction between the breeders of dogs - it could be ...

COMMISSIONER WATLING:

And the employees who service them?

MR HANLON:

Yes. Whether or not that award is - we normally do not cover employees who seek membership, who are employed in kennels.

I think you have raised an interesting point. We have not - I think we would draw the line at, in our intention or view - is that somewhere about goats and sheep is where the distinction between agriculture and the breeding of animals, dogs or cats for show or domestic purposes.

COMMISSIONER WATLING:

Right. Mr Fruin?

MR FRUIN:

Mr Commissioner, I just wish to say that the Chamber has been party to the discussions that have taken place. And we would certainly recommend and support any application that seeks to take away the confusion that exists with the dual cover of the awards.

COMMISSIONER WATLING:

Thank you, Mr Fruin. Can I just ask the parties: If this application was to be successful could you give me probably - I know you have given me a brief run-down on where you see the thing heading after this; but do you see the Agriculturists Award being dealt with first or the Horticulturists Award?

I must say to you that, at this stage, I am quite sympathetic to the application. And so that is another reason why I ask the question .

MR HANLON:

We would see the matters being dealt with before the Commission, together.

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MR HANLON:

It would be my intention to bring the scope clause of the Horticulturists Award to you, at the earliest opportunity, so that that can be clear.

Because of the need to do a lot more work on the structure of the Agriculturists Award, that can now proceed. The work involved in the Horticulturists - the majority of it - will be elimination of material, or clauses, that do not apply to the proposed new scope clause. So that, that we see as a shorter exercise than the agricultural one.

In terms of a time scale, we would be hopeful of completing the exercise by April. But both would come, in terms of awards, would come back to the Commission at the same time. They may be dealt with separately, if there is arbitrated matters or something to be dealt with. But so that the matters could come forward and be examined, because there is a shifting of fifty percent of horticulture into agriculture. And therefore the arguments would be the same for the justification of it. But that is our intention.

The reason for proceeding this way is, primarily, agreement had to be reached on what would be in agriculture. Once that is reached, horticulture is now - the definition of what will be covered is simply a matter now of agreeing on the words. But they would come before you at the same time and be handled together.

I suppose, from the union's point of view, we see the primary responsibility for agriculture as being the farmers and graziers and in horticulture, the primary responsibility being the Chamber of Industries. That has been the traditional way it has gone. It now enables us to deal with them, in terms of the award, in a way which



MR HANLON:

will speed the process up.

COMMISSIONER WATLING:

If there are no further submissions, I will thank you for your contributions. And I will try and get out a decision on this as soon as possible. But it would be on the basis that it is a decision on this threshold question, so that it will enable you to do some more work.

HEARING ADJOURNED