



TASMANIA

Tasmanian Industrial Commission

Industrial Relations Act 1984

T No. **9626 of 2001**

IN THE MATTER OF an application by
the Automotive, Food, Metals,
Engineering, Printing and Kindred
Industries Union to vary the Metal and
Engineering Industry Award

Re: variation of Clause 12 - Contract of
Employment

COMMISSIONER IMLACH

HOBART, 19 July 2001

TRANSCRIPT OF PROCEEDINGS

Unedited

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

HEARING COMMENCED 9.30am

COMMISSIONER: I'll take appearances.

MR P. BAKER: Sir, I appear on behalf of the applicant organisation, P. BAKER.

5 COMMISSIONER: Thanks, Mr Baker.

MR D. PYRKE: If the commission pleases, DARYL PYRKE, appearing on behalf of the Association of Professional Engineers, Scientists and Managers, Australia.

COMMISSIONER: Thanks, Mr Pyrke.

10 **MR M. WATSON:** May it please the commission, MARK WATSON. I appear on behalf of the Tasmanian Chamber of Commerce and Industry.

COMMISSIONER: Thanks, Mr Watson. Yes, Mr Baker, you looked for a minute there as if you were going to get away scot free.

15 **MR BAKER:** No, it's just good timing on the part of Mr Watson. Excellent timing I would have thought, actually.

The application says, before you, this matter arises out of a decision of the full bench of the federal commission in Print T4991 in a matter pertaining to the Metal Engineering and Associated Industry Award
20 1998 Part I. In a decision by His Honour Justice Munro, Deputy Senior President Polites and Commissioner Lawson in decision dated 29 December 2000.

25 Sir, it's not my desire today to actually enter into and proceed with a lengthy submission in respect of support for our application before you today. I should indicate to you, sir, that I have had some discussions with Mr Watson of the TCCI in respect of the application itself and as a consequence of those discussions, following some comments which I would like to put on the record in relation to the nature of the application before you today, it would be our submission to you that
30 this matter be adjourned and then set down for hearing proper in around four to six weeks time and at that time we would then ask you to proceed to hear the matter to its conclusion and for you to make a decision following the submissions that will be placed before the commission.

35 The claim that's before you, sir, is to increase the casual loading from 20 to 25 per cent and as I previously indicated to you, sir, that matter arose out of a decision of the federal commission. The commission, as it was constituted, that is the federal commission, believed that permanent casual must be eradicated as a form of employment and
40 indeed in the state jurisdiction here and in many of its awards

including this award, the concept of a permanent casual has in fact been all but eradicated and this part of the application therefore concentrates on the issue of the loading which is paid to casual employment.

45 The federal commission took the decision that casual employment should be no cheaper nor should it be any more expensive than permanent employees. The loading, that is the increase in the loading, should not be designed nor should it encompass any detriment in the use of casual employment. The loading as we know cashes out certain
50 entitlements. In the past the 20 per cent, or currently the 20 per cent, is taken to adequately compensate for annual, personal leave, public holidays, et cetera and those amounts were calculated at around about 19.8 per cent.

The decision of the federal commission indicates that long service leave
55 should now be factored in as well. It also, having factored it in, discounts the full value on the basis that few employees actually achieve the level of service that is required to qualify for long service leave.

Secondly, the decision also makes reference to the *Termination Change
60 and Redundancy* test case in respect of termination of employment. It makes note that casual employees should in fact have factored into their employment, or their contract of employment, a loading, or a compensatory component of the loading should be devoted towards the issue of the inherent nature of the work and that is, the insecurity that
65 flows from it and in turn, that should be factored into the overall calculation of the loading.

The commission also indicated that historically the casual loading has compensated for lost time and the intermittency of employment. It accepted in its decision that this was a legitimate consideration. The
70 statistical evidence provided by the AMWU in those proceedings and indeed by the Australian Industry Group indicated that, on average, casual workers work for 95 per cent of the weekly hours of a permanent employee and, again, the 5 per cent differential was again used as a basis for increasing the loading.

75 Sir, this very brief outline which I've presented to you will form the basis of the application that will be determined by yourself. What I have indicated to you this morning is not a thorough outline but just a preliminary overview of some comments which were made by the federal commission in arriving at its decision. Clearly, the decision of
80 the full bench of the federal commission will be of paramount importance in consideration of this matter.

The other issue which I need to raise, I think, at this stage is a view which the AMWU has consistently placed before the commission over the years since the creation of the Metal and Engineering Award in this
85 state and that, sir, is that we are viewing an industry, the metal and

and engineering industry and there are employers in the state, large employers in this state who are bound by the provisions of the federal award who are now, by virtue of the operation of that award, meeting the new prescriptions for casual employment.

90 We have maintained a position, a consistent position, over the years that employers in this industry should be bound where ever possible by similar award prescriptions.

Having said that, sir, as I indicated to you at the outset, it was not my intention to proceed to place any lengthy submission before you today, rather than simply to open up the matter before you and look at programming the matter at a later date whereby the submission in full can be considered. I'll leave it there, subject to any questions or comments from yourself.

COMMISSIONER: Thanks, Mr Baker. Mr Pyrke?

100 MR PYRKE: Thank you, commissioner. Sir, Mr Baker has outlined the nature of the claim that's before you and he's also outlined some of the arguments that he'll be using in support of that claim. I want to say, I like the sound of what he has put to you. In terms of the scheduling and so forth, it's obviously the AMWU's claim and we'll fit in with them as best we can. If the commission pleases.

COMMISSIONER: Thanks, Mr Pyrke. Yes, Mr Watson?

MR WATSON: Thank you, commissioner. I don't intend to go to the issues that Mr Baker has taken you to this morning because obviously when this matter is determined, we'll get our opportunity to respond to those issues but I can confirm that Mr Baker and myself did have a meeting the week before last, I think it was, to discuss this particular matter in an amount of detail based on the claim, the reasons for it, et cetera.

I guess the initial comment that I would make to you, commissioner, is that the application will, simply from the employer's point of view, increase labour costs, do nothing more or nothing less. On that basis, I would indicate to you that we will be consulting with our members and with the industry as best we can and Mr Baker has been informed of that. We will then obviously arrange to meet with Baker again to discuss the issue and then obviously if there's no agreed position or there's no consent, et cetera, then obviously we'll come back to the commission and have the matter determined but at this stage I can't put any more on the record other than that, other than to say, we need to consult on what is a fairly hard hitting issue and I guess in terms of programming, we're probably in your hands in terms of dates, et cetera but perhaps we may need to go off the record to discuss that. If it pleases.

COMMISSIONER: Thanks, Mr Watson. I think we will do that.

OFF RECORD 9.43am

130 **ON RECORD 9.46am**

COMMISSIONER: Thanks for that, gentlemen. This matter will resume on Tuesday, 18 September at 10.30am. In the meantime, I expect the parties will have meaningful discussions with a view to returning here with a settlement. However, I understand the complexities of the matter and it may be we will have to address it fully.

I also note that the award is in need of consolidation. We might look at that at the same time. Thank you.

HEARING ADJOURNED 9.48am