

TASMANIAN INDUSTRIAL COMMISSION
Industrial Relations Act 1984

T No. 5296 of 1994

IN THE MATTER OF an application by the
Australian Liquor, Hospitality and
Miscellaneous Workers Union - Tasmanian
Branch for the making of a new award

re the Wholesale Plant Bakeries Award

COMMISSIONER WATLING

HOBART, 4 August 1995
continued from 19/7/95

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: No alterations to appearances?

MR O'BRIEN: I don't think so.

COMMISSIONER WATLING: Right. No alterations, Mr O'Brien

5 MR O'BRIEN: Mr Commissioner, I'm pleased to report that following our recent - most recent hearing - and conferences in this matter, the parties have come to a point where we have I think agreed to a package which I have put to members, and by a majority vote the package has been accepted, as we understand it.

10 We have not at this stage committed the package to writing in the form of a draft award for your consideration, and what we would propose to do now, Mr Commissioner, is to commence the process of drafting immediately. Indeed, we have set aside a good part of today to process that. And we would expect within a period which I would estimate at between two and four weeks we will be seeking to put a document before the commission which will reflect the proposed award in totality, and reflect the package as agreed.

15 There were quite a number of issues, which as you are aware, Mr Commissioner, we were apart upon, and there have been a number of compromises which have been agreed upon.

20 Mr Commissioner, the purpose of this exercise in part was to establish the award as a fair basis for enterprise discussions. We believe, if our understanding of the package is correct, that we have established that, and that's the basis on which our members have approved the package as reported to them. However, if we have difficulties about particular items of drafting, it would be our suggestion that with your approval we have recourse to you to assist with any drafting difficulties.

25 It is proposed to base the draft, generally speaking, upon the Bakers Award as it stands, but we will be hopefully making some alterations to deal with some of the interpretive difficulties with that award, and to make it a -

COMMISSIONER WATLING: I hope so - I can't understand it myself.

30 MR O'BRIEN: Well, it takes a fair bit, I must admit, in some respects, but there are deficiencies in that award which we will be seeking not to be carried forward into the Wholesale Plant Bakers Award. And, having said that, I suspect the best course of action would be to stand the matter out of the list with recourse to either party to seek relisting.

As I said, we have an expectation that we would be looking to present a complete document within a period of two to four weeks.

35 MR EDWARDS: Thank you, commissioner. I am in a position to I think confirm the observations that have been made by Mr O'Brien.

40 It would appear that the parties have been able to negotiate a package which is acceptable to both parties, and as we understand it, Mr O'Brien has now put that to his members in a fairly detailed series of meetings around the state this week, and the report we have back from Mr O'Brien is that the majority of his membership have accepted the package that's been negotiated.

45 There is a considerable amount of drafting to be done. We will be approaching it on the basis of almost starting from a clean piece of paper saying, right, we have got nothing, let's start working through from there. So we will start at clause 1 and end up at the clause number whatever we end up with.

COMMISSIONER WATLING: Simple English.

MR EDWARDS: It will be simple to us.

5 The test of that is always having a person not involved in the drafting understand it, and I think that is the task that the commission will largely undertake when we present a document; that if you are able to follow it with ease, then clearly the language we have used is probably simple enough for people out in the world to understand it. It is always difficult when you are very close to the drafting processes to be sure that what you have put together is going to be understood by others.

So we will be sending out -

10 COMMISSIONER WATLING: The Hydro went through this exercise not so long ago. They drafted a new award and they thought they had sent it out to an expert in plain speak and simple English and they got the document back with about 240 amendments asking why they used these things and there was no need to use those. So it is interesting, isn't it?

15 MR EDWARDS: That reflects the point I make, that what we think is simple English as industrial relations practitioners experienced in reading industrial awards and other things of that nature, isn't always easy to other people. So what we will do, or what I have undertaken to do, is as we finalise parts of the document I am going to circulate it to my members and ask them to vet it for their understanding, and if they
20 are following it okay they are the only four companies in the state using the award, maybe we are a long way forward.

Certainly it concerns me if the commission is saying that it currently has difficulty reading the award, given the role the commission as currently constituted played in creating the award.

25 COMMISSIONER WATLING: I hope you know that at the time it happened there was a vote of board members and I do recall that I was the odd person out, after being out-voted by the Chairman, Mr Holden and Mr Hanskim on the other side.

MR EDWARDS: We all have to share some blame in the long term.

30 COMMISSIONER WATLING: Yes. Well, I can honestly say that on a couple of issues I didn't vote that way at all.

MR EDWARDS: So, having said all of that, commissioner, I think Mr O'Brien has suggested the matter be stood out of the list for a period, and I think that's probably appropriate. We don't want to be wasting the time of the commission or, indeed, our own in coming here and not being ready to proceed. It is best perhaps if we come back
35 when we are ready.

But I do endorse the request Mr O'Brien has made to perhaps bounce drafting problems off the commission as we go and as they occur, because I think that will assist us if we can resolve them as we go. Hopefully, we won't have to come to any formal arbitration on those sorts of issues. I think we are sufficiently clear on where
40 we are going to be able to resolve these issues.

There are some awards - clauses - in the existing award which we have said to the union that we wish to revamp fairly considerably, because they are long-winded and they are difficult to understand, and we'll be trying to go through that process as we go and, as you say, use simple English and try and make the whole thing a bit easier for
45 all of us.

COMMISSIONER WATLING: The question may even be raised as to whether or not you need to keep reprinting the parental leave clause and just refer to the actual case number.

5 MR EDWARDS: Certainly on our own privately printed copies of the award we have done that, and we provide the parental leave as a separate booklet, simply because it is far easier than putting the 30-odd pages into the award every time.

COMMISSIONER WATLING: Well, I know some other awards are doing it that way. I mean, the unions and the employers just making a special document of the parental leave thing.

10 MR EDWARDS: Yes. That's something we can have a look at as we are going through the drafting process. Although, having said that, there is some benefit in saying a self-contained document is also of benefit.

COMMISSIONER WATLING: Yes, I agree. Yes. Yes.

15 MR EDWARDS: We would need to marry together those two perspectives and see what we come up with.

COMMISSIONER WATLING: No, I am not telling you how to do it, really, I just ask you to think about it.

MR EDWARDS: No, that's fine.

20 COMMISSIONER WATLING: Right, well, so if we adjourn sine die I will just await a call from one or either party? One or both parties.

MR O'BRIEN: Yes. Mr Commissioner, yes, that would be our preferred course of action.

I was just wondering if we could go off the record briefly about future hearings?

COMMISSIONER WATLING: Right.

25 **OFF RECORD**

COMMISSIONER WATLING: adjournment, and this matter will stand adjourned until 10.30 on 11 September 1995. Thank you.

HEARING ADJOURNED