

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 5389 of 1995

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

re hours of work

COMMISSIONER GOZZI

HOBART, 7 March 1995

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER GOZZI: Appearances please.

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

COMMISSIONER GOZZI: Thank you, Mr Watson.

5 **MR G. COOPER:** If it please the commission I appear on behalf of the AWU-FIME Amalgamated Union Tasmanian Branch - COOPER, G.

COMMISSIONER GOZZI: Right, thank you, Mr Cooper.

**MR M. HILL:** If it pleases, I appear on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union - HILL, M.

10 COMMISSIONER GOZZI: Yes - thank you, Mr Hill.

**MR K.D. BECKER:** BECKER, K.D. If the commission pleases, I appear on behalf of the CEPU.

COMMISSIONER GOZZI: Now that's taking the easy way out, Mr Becker.

MR BECKER: It certainly is, sir.

15 COMMISSIONER GOZZI: But we know what you mean.

**MRS H.J. DOWD:** If the commission pleases, I appear on behalf of the Australian Municipal Administrative Clerical & Services Union - DOWD, H.J.

COMMISSIONER GOZZI: Congratulations.

20 **MS D. MONCRIEFF:** If the commission pleases, DIANE MONCRIEFF for the Construction, Forestry, Mining and Energy Union.

COMMISSIONER GOZZI: Yes, thank you, Ms Moncrieff. Mr Watson?

MR WATSON: Commissioner, just before we commence, I was wondering if I might be able to seek leave to amend our application please.

COMMISSIONER GOZZI: Yes, certainly - in what way?

25 MR WATSON: The application is to amend clauses 21(a), (b) and (c) of the award in relation to hours of work for day workers, non continuous shift workers and continuous shift workers.

COMMISSIONER GOZZI: Right.

30 MR WATSON: Okay. I'd like to seek leave to delete the part of our application that goes to day workers and non continuous shift workers.

COMMISSIONER GOZZI: Right. So -

MR WATSON: - which will be 21(a) and 21 (b).

COMMISSIONER GOZZI: 21(a) and (b) - right.

35 MR WATSON: Yes. So that would just leave in relation to the application the - the amendment to 21(c) which goes to continuous shift work.

COMMISSIONER GOZZI: Right. So I'll put deleted - and it's the 7th isn't it - of three, '95? Any objections to those amendments?

MR COOPER: No objections.

5 COMMISSIONER GOZZI: Alright. Well leave to amend the application is granted. Mr Watson.

MR WATSON: Commissioner, following some discussions that we had just prior to the hearing commencing, I believe that it may assist if we perhaps go off the record for a few moments.

COMMISSIONER GOZZI: Alright. We'll go off the record.

10 **OFF THE RECORD**

**SHORT ADJOURNMENT**

COMMISSIONER GOZZI: On the record or off the record, Mr Watson?

MR WATSON: Oh, I think we can stay on the record, commissioner, thanks.

COMMISSIONER GOZZI: Right, thank you.

15 MR WATSON: Thanks for the opportunity for that adjournment, commissioner. I believe that the matter has been sorted out in terms of general understandings between the parties.

20 The application for amendment to the hours of work clause of the Cement Makers Award as amended this morning is to change the hours of work specifically for employees at the Goliath Cement Manufacturing Plant at Railton.

25 The application is in fact part of the ongoing implementation of the structural efficiency principle at enterprise level and as far as these - this particular arrangement for the hours of work is concerned, it is a matter that has in fact come from the shop floor in terms of the changes made and the company is quite happy to participate in a trial.

30 As I said, the request did come from the employees and specifically it came from the AWU members on site to work 12 hour shifts as a new arrangement. The company decided that this could be implemented on the base of a trial for 12 months and that 12-month trial would also give the option to employees to opt out after 3 months if the arrangements are not working.

35 Now the main issue of concern for the employer, however, is that the Cement Makers Award provides for a maximum of 10 hours per day only for day workers, non continuous shift workers and continuous shift workers, so therefore if the new arrangements were to be trialed - and I can advise again that the employers are quite happy for the trial to proceed - that the award must be varied to protect the employer against any action which could potentially arise regarding award breach at a later date.

40 Now I make the point and I stress that that comment is not directed towards the union parties here today, however the company could be vulnerable if an employee resigned then decided to take a matter of his owing perhaps to this commission or elsewhere in relation to award breach.

Now just some of the background, commissioner. At the plant we have day workers who just work Monday to Friday on the basis of a 19 day month arrangement. We have non continuous shift workers in quarry operation who work Monday to Friday but the operation goes 24 hours a day, and we also have continuous shift workers who work Monday to Sunday 24 hours a day who were working three by eight rosters prior to the change to the 12 hour shifts.

The original proposal for the 12 hour shifts has in fact been implemented and it was implemented on the 1st March which was last Wednesday.

Now as far as the company is concerned, there are advantages with the 12 hour shift arrangement in that changeovers are reduced from the three to two per day, so that would reduce any - any confusion perhaps in relation to .... changing at the changeover in relation to what's happened in the previous shift.

There will be ongoing monitoring of the trial between the production manager and union reps on site in relation to the success or otherwise of the trial. And as I said, three months after the trial has been in place there will be an option to opt out if it's not working.

The company believes that if it is decided to revert to the previous roster and the trial is unsuccessful that there should be a notification period given. Now we say that, but also the company is prepared to change the roster arrangements immediately if staff want to do that, so the company is flexible in terms of notification to change the roster. We're proposing that it should be a 3 months notification period, however if employees want something less than that well then the company is quite happy to come to the party.

At the end of the process if the trial proves to be unsuccessful then staff revert to the previous roster, also the company gives an unequivocal guarantee that there will be - there will be in fact support for an award variation to reinsert the 10 hours or the award variation itself will just simply expire on the basis that - that the - we're reverting back to the previous roster.

As far as the specifics of the roster are concerned, commissioner, the roster at present applies to process workers, production workers and electricians on site. Now as far as the company is concerned we give a guarantee on the record that they - and I stress that those workers have been working the roster since the 1st March - so the guarantee is given that if the roster is to apply to any other category of staff or any other workers who are not working the roster now, then that will have to be the subject of discussions and also the subject of agreement in accordance with the award provision for changing of hours.

Now I don't think we can do any more than that in terms of commitments given, but I think there is a general understanding between the parties as to exactly what we're about. The matter, in our view, commissioner, is, as I said, is partly - continuing implementation of the structural efficiency principle at enterprise level. It's our submission that the application does not offend the commission's wage fixing principles nor the public interest and on that basis we would ask that you vary the award as per our application with an effective date of the 1st March, which is when the roster commenced, and I said the guarantee is given that if the roster is not working and the employees wish to opt out well that will occur basically as soon as it can be agreed on site that that change be made. If it pleases.

COMMISSIONER GOZZI: Yes. Mr Watson, you mentioned the possibility of a sunset provision; the clause that you've got here of course doesn't do that.

MR WATSON: No.

COMMISSIONER GOZZI: So, what, it's just an agreement between you and the appropriate unions -

MR WATSON: Well -

5 COMMISSIONER GOZZI: - you'll seek to do something at the end of the 12 month period?

MR WATSON: Yes, I guess we can just -

COMMISSIONER GOZZI: It'll either stay there or you'll seek to delete it?

10 MR WATSON: Yes, I guess we could either do - if we can do it that way and give the guarantee now on the record that if - if basically the roster stops because it's not working and the employees want it to stop, well then we'll come back here and either promote the award variation or support it to back to 10 or the order that you issue as a result of this application, if you do issue an order and if you support our application will apply for 12 months and we'll immediately expire at the end of that 12 month period or at the end of 3 months of if it's decided that the roster shall discontinue.

15 COMMISSIONER GOZZI: Do you reckon I can issue an order like that given the application - the way it's framed?

20 MR WATSON: Well I guess that the option is there for you to do that. Our application was put in on the basis that the award would be varied and then we would give the commitment for it to come back and support another variation if we need to - so I guess that's our first position.

COMMISSIONER GOZZI: I mean the decision can certainly do, but I'm not so sure about the order. I mean I can refer to it in the decision - there's no problem about that - but I don't think I can order it.

MR WATSON: Well if that's the case -

25 COMMISSIONER GOZZI: I'm endorsing the - I can endorse the variation and put all the qualifications in the decision but I couldn't obviously issue an order in the context of a sunset provision if that was the application before me.

30 MR WATSON: Yes. Well as far as we're concerned, commissioner, we're quite happy to go with the first option which is that we will - you know - I don't what else I can say -

COMMISSIONER GOZZI: Alright, no, that's fair enough.

MR WATSON: - to come back and support a variation as soon as the roster stops, if you like, and I think that basically is the same thing in any case.

35 COMMISSIONER GOZZI: Yes. I mean effectively the variation applies to all continuous shift workers -

MR WATSON: Yes.

40 COMMISSIONER GOZZI: - and you've said that it should apply to process workers, production workers and electricians. Now I'm not sure if there are any other categories involved - whether there are metal workers involved and any other category, but effectively the award variation the way you've promoted it applies to those people but the award variation won't reflect that.

MR WATSON: No, but what I'm - what I'm saying is that the award variation will allow other workers to work 12-hour shifts but that won't happen unless there is agreement between -

COMMISSIONER GOZZI: I see.

5 MR WATSON: - the employees -

COMMISSIONER GOZZI: Right.

MR WATSON: - and management.

COMMISSIONER GOZZI: Right.

10 MR WATSON: Okay? So that the guarantee is given that it won't be forced on anybody else other than those that are working it now because -

COMMISSIONER GOZZI: So you want - you want the broad variation in other words?

MR WATSON: Yes, yes.

15 COMMISSIONER GOZZI: On the basis that there may be others who will come on board who, subject to discussions with the appropriate people -

MR WATSON: Yes.

COMMISSIONER GOZZI: - appropriate unions may then apply without the need for further change?

20 MR WATSON: That's right - and we don't have to come back here and vary the award again.

COMMISSIONER GOZZI: Right, okay. I understand that.

MR WATSON: Thank you.

COMMISSIONER GOZZI: Mr Cooper?

25 MR COOPER: Commissioner, if I may with respect to the application that has subsequently been amended, effectively all it's seeking to do now is amend one clause (c)(vii) in the hours of work clause and deleting the word 'ten' and replacing it with 'twelve'. The purpose of that change, sir, is one that has resulted, as Mr Watson has said, from discussions with our members and the company, we were approached by  
30 our members to implement a 12 hour shift roster some time ago and it has taken some considerable discussion with the company to in fact get that trial off and running. And if I can produce a couple of exhibits that demonstrate that we have first of all had discussions with the company.

COMMISSIONER GOZZI: Exhibit AWU-FIME.1.

35 MR COOPER: In terms of that correspondence, sir, what it does do, and I apologise - we ran out of toner as I was doing that this morning, so it's a little bit light on - I can replace that though if you -

COMMISSIONER GOZZI: No, it's alright, I can read it.

MR COOPER: - need to - in terms of the correspondence, what it's asking for is a meeting with the company to talk about 12 hour shifts and they were to contact our regional organiser, Mr Lowe - or he's actually the president of our the union - to progress that. I must advise that meeting did subsequently occur and as a result of  
5 that there's further correspondence that supports the position that has been adopted by the union in respect to this application.

COMMISSIONER GOZZI: That's AWU-FIME.2.

MR COOPER: This correspondence is a little bit more detailed, sir, and it does demonstrate that there was a meeting and that the 12 hour shift trial for central control room, which is the brief that we've been given, has been agreed to and what it does say if I can just read parts of that:  
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*We advise that -*

*-the second paragraph -*

*We advise that on a 'without prejudice' basis we are prepared to implement a 12 hour shift roster for a trial period of 3 months.*  
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*It is our understanding that a suitable roster is to be developed by the parties.*

*During the period of the trial the parties undertake to monitor all aspects of the roster including:-*

- *occupation, health and safety issues*
- 20 • *the suitability of the chosen roster configuration*
- *production levels*
- *wages*
- *impact on the rest of the site.*

*Your early confirmation of the acceptance of a trial roster would be appreciated.*

25 And that was dated the 1st February and from our branch secretary.

Now that correspondence, sir, needs some clarification because I did speak to Mr Lowe again this morning - he was interstate - and he said what the 3 month period was, was at the expiry of 3 months the parties could signal that they wanted to retire from the trial and either party could do that on a 'without prejudice' basis. He did advise though  
30 that if the thing was working then they would trial it for a significantly longer period of time which has been as Mr Watson has said - a 12 month period.

So basically what we have, sir, is we have a variation to the award, that as the employer said, seeking to cover their back should anything go wrong. It is on a 'without prejudice' basis - the trial - and it is, as far as our members are concerned,  
35 only for the central control room which is the only area on site as I understand that is on a continuous shift roster. And that is for that crew, sir, which includes the central control room operator and his backups which are three members of ours where we have rovers and others.

5 Now I understand too, from discussions this morning, that it also involves some services people in terms of the electricians. So in terms of that, sir, that's the brief that we've been given. As I said, discussions have been ongoing for a period of time. They have been involved with our president and our site delegates and a Mr Anderson on site and we would seek to support the application to vary on the basis that our brief does only go to the central control room.

10 Now if we read the rest of the clause, sir, taking some comfort from what Mr Watson has said, the clause goes on to say - that's [c](vii): Provided that in any arrangement of ordinary working hours with the ordinary hours worked, the ordinary working hours are to exceed eight on any shift, the arrangement of hours shall be subject to the agreement of the employer and the majority of the employees concerned.

15 Now, sir, so if he does have a very broad variation to the award then it can only be implemented on site by discussion with the employees. Now we would suggest too, sir, that it would be prudent for the company to involve ourselves in that discussion should they extend - seek to extend the coverage of that clause.

20 In terms of the site, sir, as you would be aware, you have had one brief visit there - I understand the inspection in the afternoon. The award itself, sir, is an industry award but it does only have application to one site which is the Goliath site at Railton. So the variation will only affect the Goliath site. It is continuing with the structural efficiency enterprise. Basically the trial was to be on the basis that none of our members would be disadvantage and the cost impost to the company would be minimal. So we accept that during the course of that trial all those things that are contained in exhibit AWU-FIME.2 will be discussed and will be considered, and should, for whatever reason there be a need to come back to the commission at the completion of the trial, either at 25 the 3 month or the 12 month period then obviously we would take some comfort in the commission including in any decision that was forthcoming should the commission be of a mind to support this application that those undertakings have been given and the parties can rely on that then.

30 Other than that, sir, we agree with the company that it does not offend the wage fixing principles of this commission as currently constituted. It does not offend the public interest; in fact it should enhance it if the members can gain some benefit of a 12 hour shift. We'd also endorse the operative date from the 1st March 1995 and would seek the commission's consent to the application as prescribed. If the commission pleases.

COMMISSIONER GOZZI: Yes. Thank you, Mr Cooper. Mr Hill?

35 MR HILL: Yes, Mr Commissioner, thank you. During the adjournment period I had the opportunity to consult with the company engineer, Mr Denis Knuckie, and the manager, Mr David Covington. Firstly, I was trying to ascertain whether there was any potential for our members to become involved and both of those persons indicated that there is.

40 The manager and the engineer assured me that our members would not be forced to change their existing shift arrangements until there is consultation and agreement between the parties. In the context of that comment I assume that the parties would be the relevant respondents to the award and that those discussions would be held in accordance with the appropriate provisions of the award which has already been alluded to by - by Mr Cooper.  
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So under those circumstances, Mr Commissioner, I'm prepared to indicate on record that our unions will support the application. Thank you.

COMMISSIONER GOZZI: Thank you, Mr Hill. Mr Becker?



MR BECKER: Thank you, sir. I, too, was privy to the conversation with Mr Hill and Mr Knuckie in which Mr Knuckie indicated that four electricians had indeed out of the crew four had picked up the option of the new roster and were currently working it. And I suppose the - I'm in a similar position to Mr Hill, that if any of the other crew are to go to different arrangements then they would subject to discussions and agreement as per the award, and in doing so we support the application.

COMMISSIONER GOZZI: Thanks, Mr Becker. Ms Moncrieff?

MS MONCRIEFF: Thank you, Mr Commissioner. During the adjournment, sir, I contacted our north west organiser and I have been advised that none of our members are currently continuous shift workers so would not be directly affected at this time. I have some concerns of varying the whole award to suit the one circumstance but taking on board the assurances that have been given to Mr Hill - and I'm stretching it a little beyond his membership and taking it to the parties - I take some comfort, sir, that should our people be affected in the future by these provisions that as per the award and those assurances there would be negotiations, and in that circumstance I would support the application. If the commission pleases.

COMMISSIONER GOZZI: Thanks, Ms Moncrieff. Anything further, Mr Watson?

MR WATSON: No thanks, commissioner.

COMMISSIONER GOZZI: Alright, well look, in the circumstances, I'll address the issues in the decision which is about to issue. I'll support the order and the decision .... will issue in due course, and the operative date will be from the 1st March 1995. Thank you.

**HEARING CONCLUDED**