

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2756 of 1990

IN THE MATTER OF an application
by the Metal and Engineering
Workers' Union, formerly the
Association of Draughting,
Supervisory and Technical
Employees for the making of the
Metal and Engineering On-Site
(Tasmania) Construction Industry
Award

COMMISSIONER WATLING

HOBART, 26 March 1992
continued from 17/2/92

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances in that matter please.

MR P BAKER: Sir, I appear on behalf of the Metal and Engineering Workers Union - P BAKER.

COMMISSIONER WATLING: Good, thank you.

MR J LONG: If the commission please, JEFF LONG, appearing on behalf of FIMEE.

COMMISSIONER WATLING: Good, thank you.

MR K D BECKER: If the commission please, BECKER K D. I appear on behalf of the Electrical Trades Union.

COMMISSIONER WATLING: Good.

MR S CLUES: If it please the commission, I appear on behalf of the Tasmanian Confederation of Industries - CLUES S.

MR S P KNOTT: If the commission please, KNOTT S P, appearing on behalf of the Australian Mines and Metals Association.

COMMISSIONER WATLING: Right. Well we've had several goes at this application and we've adjourned on a number of occasions. It's my understanding that you want to lead off with this matter this morning, Mr Baker.

MR BAKER: Yes, thank you, Mr Commissioner. Again there have been numerous discussions, negotiations, arguments, and what have you over a long period of time concerning the creation of this award, and I would hand to the commission - well I did intend actually to hand to the commission a draft of the award. However, I understand there is a couple of errors with it that Mr Clues drew to my attention just prior to these hearings commenced - this hearing commencing - I'm sorry. I understand Mr Clues has got an updated edition.

COMMISSIONER WATLING: Yes, I take it that we're only dealing with title and scope today anyway.

MR BAKER: I'm sorry, yes, the title and the scope and the definitions which relate to the description of industry.

COMMISSIONER WATLING: Yes. Right. So who's going to give me a copy of this? So - so we've all got the same documents have we? Right. Well we'll mark this document A.1. Now maybe - we might just go off the record and just read through it, and then if you want to take me through it -

MR BAKER: Well, as I understand it, it's the same as the document I gave you yesterday, but Stuart's made a couple of grammatical changes to it, but other than that I think the two documents are the same, so -

COMMISSIONER WATLING: Oh, right, well keep going then.

MR BAKER: If I take you through the document itself, sir. It's headed:

The Metal and Engineering On-site Construction Industry Award.

1. TITLE

This Award shall be known as the Metal and Engineering On-site Construction Industry Award.

COMMISSIONER WATLING: Right -

MR BAKER: 2. -

COMMISSIONER WATLING: - now in - in its actual appearance, are you putting 'on-site construction' in brackets?

MR BAKER: I hadn't considered that. I really don't think that that's probably necessary. I think that it ought to simply stay as it is.

COMMISSIONER WATLING: Right.

MR BAKER: So that it's, you know, it's quite bold and it's quite succinct and different from the workshop award.

2. SCOPE

This Award is established in respect of On-Site Construction Work (as defined) in the Metal and Engineering Industry (as defined).

And then there are subsequent definitions which detail it.

PROVIDED THAT the terms of this award shall not be construed in any matter to limit or affect the Scope Clause of any other award of the Tasmanian Industrial Commission.

PROVIDED ALWAYS that until the making of this award has been finalised in respect to wage rates and conditions of employment or until this proviso has been deleted, employers falling within the scope of the Award, shall where appropriate classifications appear therein, observe the Metal and Engineering Industry Award in all respects.

If I may take you to the definition clause, clause 3.

3. DEFINITIONS

Metal and engineering industry for the purposes of Clause 2 - Scope, of this award, shall mean:-

and then it goes on, sir, basically these definition - the definition is an abbreviated form of the definition which appears for industry within the metal and engineering industry. And we've tried to identify those specific areas which in fact would have application in an on-site situation. So it says:

Every operation process or function carried on in connection with or incidental to any of the following:-

1. Mechanical and electrical engineering
2. Smithing
3. Boilermaking, and erection and/or repairing thereof
4. Bridge and girder construction, erection and repairing
5. Steel fabrication construction, erection and repairing
6. Welding
7. Metal machining
8. Ironworking
9. Metal window frame making and repairing
10. Safe and strong-room making and repairing
11. The erection and installation, maintenance and repair of all forms of electrical machinery, apparatus and appliances
12. Engine driving in all its branches which is incidental to the metal and engineering industry
13. sorting, packing, dispatching, distribution and transport in connection with any of the foregoing

And then, sir, we have a definition for what is meant by on-site construction work.

(i) Metal and Engineering Work (as defined), performed in the work of construction, fabrication, erection and/or installation work or work incidental thereto when it is carried out at a construction site which is specifically established for the purpose of constructing, fabricating, erecting and/or installing the following;

(1) power stations, oil refineries, terminals and depots; chemical, petro-chemical and hydrocarbon

plants' and associated plant, plant facilities and equipment;

(2) Major industrial and commercial undertakings and associated plant, plant facilities and equipment including undertakings for the processing and/or smelting of ferrous and non-ferrous metals, the processing of forest products and associated by-products, acid and fertiliser plants, cement and lime works, and other major industrial undertakings of a like nature;

(3) plant, plant facilities and equipment in connection with the extraction, refining and/or treatment of minerals, chemicals and the like;

(4) transmission and similar towers, transmission lines and associated plant, plant facilities and equipment

(5) metal trades work on other engineering projects.

(ii) Maintenance and/or repair and/or servicing work carried out on site by the employees of contractors or subcontractors in connection with contracts for on-site construction work referred to in paragraph (i).

(iii) (i) Provided that it shall not include any work which is incidental to or of a minor nature in relation to the work normally performed by an employee of an employer not engaged substantially in metal and engineering construction, including any such work associated with the installation or servicing of any of the following equipment or systems:-

- telephone
- telegraphic
- alarms
- surveillance
- electronic cash registers
- intercommunication
- sound
- internal security systems
- safes or other equipment designed to protect valuable items
- signs including illuminated signs

(ii) This Award shall not apply to:-

work carried out within a permanently established place of employment such as a workshop, factory or

warehouse where products are manufactured or services rendered.

And, sir, that would be the extent of the title and the scope and the definitions which form an integral part of the scope clause.

COMMISSIONER WATLING: Right.

MR BAKER: And that being the position, I would submit to you, sir, that the award ought to be made in those - in those terms. There is another matter which follows -

COMMISSIONER WATLING: I take it one of the major reasons would be that it is part of the restructuring program for the Mechanical Engineers and Founders Award and as part of that program that gave you some money, namely 3% for the earlier program.

MR BAKER: Yes, sir.

COMMISSIONER WATLING: Good. So I say that your submission is like terms; is it?

MR BAKER: Well, sir, I wasn't too sure whether I should start down that path again, as I'm sure I would have made those comments to the commission several times earlier to say the least, but certainly I would endorse your comments that it is part of the ongoing process of the restructuring and modernising of the Mechanical Engineers and Founders Award and forms an integral part of the two-stage process of creating a new workshop award and a new on-site award in the mechanical engineering industry - I'm sorry, in the metal and engineering industry.

COMMISSIONER WATLING: Further submissions, Mr Long?

MR LONG: No, I've got nothing further to add, sir, other than to support this submission of Mr Baker.

COMMISSIONER WATLING: Good, thank you. Good. Mr Becker?

MR BECKER: Thank you, Mr Commissioner. In supporting the submission of Mr Baker, I just wish to make a couple of comments where to the fact that the Electrical Trades Union as such is not a respondent to the Mechanical Engineers and Founders Award, but is a respondent to the Electrical Engineers Award, which in another set of proceedings is heading down a path of modernisation and restructure of that award.

We simply are saying that we will seek an interest in this award and ultimately - ultimately it may - it may result in -

in the repealing of - of certain sections of - of that Electrical Engineers Award or indeed it may result in the whole award being repealed for the on-site and hopefully that's where we'll get to.

COMMISSIONER WATLING: Good, thank you. Good. Thanks, Mr Clues?

MR CLUES: Mr Commissioner, the document that has been tendered by the MEWU is, as we understand it, to be the new scope clause for the Metal and Engineering On-site Construction Industry Award. It has been considered by the TCI and we grant our consent to that document today.

COMMISSIONER WATLING: Good, thank you. Good, thank you.

MR KNOTT: Mr Commissioner, the Australian Mines and Metals, as you're probably aware, has an award interest in the Mechanical Engineers and Founders Award. Under - under the scope clause of this draft that's been put forward, there's reference there that conditions and wage rates should be applied during this interim transition arrangement, saying they should observe the Metal and Engineering Industry Award. To the best of my knowledge that's only got a title and scope provision at this time, so if this award was made today, it would really have no relevance, so -

COMMISSIONER WATLING: Yes.

MR KNOTT: - perhaps that should be the Mechanical Engineers -

COMMISSIONER WATLING: Well I suppose it really depends on the operative date that I give it.

MR KNOTT: Right.

COMMISSIONER WATLING: The parties are in the process of finalising the Metal and Engineering Industry Award which I've relisted for 14th - I think it was - yes, 14th April, which will see the finalisation of that award.

MR KNOTT: Right.

COMMISSIONER WATLING: We've already had two days of hearing in relation to that - or two days of conference in relation to that matter and it's getting very close to conclusion.

MR KNOTT: So this draft award would have a prospective date following that finalisation -

COMMISSIONER WATLING: Well I am, you know, just giving you a rough idea. I would think the operative date would have to be considered, but certainly if that award is not in operation -

the Metal and Engineering Industry Award is not in operation then it wouldn't have any effect until it was, even if I was to give it an operative date from today. So - and keeping in mind that the operative date of the deletion of the Mechanical Engineers and Founders Award will be simultaneous with the operative date of the Metal and Engineering Award, employees would in fact be protected but I'm - I'll have to say that I will have to be slightly careful of this to make sure that people aren't left to in the meantime.

The alternative is to put a provision in there that says the Mechanical Engineers and Founders Award shall be observed, but then that would require an amendment to this decision if sometime in April and keeping in mind that we haven't dealt with the question of who has an interest in the award. It could be arguable who indeed makes the application to vary the award if no-one has an interest in it until we deal with the interest question. So it is slightly complex, but - but your point is well made and I'll have to consider that when writing my decision on the issue.

MR KNOTT: And the other thing I'd like to do at this stage, Mr Commissioner, is just to highlight in similar terms as the ETU have raised, that - that we will be seeking an award interest in this award because of the provision in regard to Definitions, Part (2), where it talks about processing and smelting ferrous and non-ferrous metals. So with that in mind if it's going to have any application on the metalliferous mining and process industry when the award interest determination hearings are set down, I would merely be placing on the record that we would be seeking to have an award interest. That would be negated of course if there was an undertaking given by the MEWU that the award would have no application on the metalliferous mining and processing industry, and if it has we'll be definitely seeking to have an award interest. If it pleases the commission.

COMMISSIONER WATLING: Well, you might want to take that on board. You might want to have a closer look at what you really mean by that. I take it that it's only construction work on that - in that area. But anyway, you might consider that in your right of reply. In other - in all other circumstances you're supporting the making of this new award?

MR KNOTT: Yes, Mr Commissioner.

COMMISSIONER WATLING: Right. Right, we might just go off the record for a moment please.

OFF THE RECORD

MR BAKER: Thank you, sir. In respect of the operative date, it would be our submission that the operative date would be that so that it coincides with the making of the - or sorry - with the finalising of the Metals and Engineering Award and the repealing of the Mechanical Engineers and Founders Award, so that there is a common operative date for those three awards, two up and running and the deletion of the third, which would be, in our submission, the cleanest way of enacting the following procedure.

Secondly, sir, we would like to place on record an understanding which has been reached with the Tasmanian Confederation of Industries insofar as it relates to the operation of the proposed Metals and Engineering On-site Construction Award, and I would simply, with the commission's indulgence, read the understanding into transcript. And I do say on behalf of the Metal and Engineering Workers Union, the Electrical Trades Union and the Federation of Industrial Manufacturing and Engineering Employees and the Tasmanian Confederation of Industries.

MR CLUES: You don't appear on our behalf.

MR BAKER: Well you can read it yourself then.

MR CLUES: No, I'll just concur with your comments.

COMMISSIONER WATLING: And I take it that it's in relation to the Tasmanian branch of all those organisations?

MR BAKER: Yes, to the Tasmanian branch of those three organisations. Yes.

as setting out the terms and conditions for the creation of the Metal and Engineering On-site Construction Industry Award -

for the unions as listed in the Memorandum of Understanding, we would concur that -

1. The Award shall initially be established as an "on-site" Award but that as a starting point the wage rates and conditions will be those prescribed in the Metal and Engineering Industry Award.
2. This interim position does not prejudice the position of any part as to the final make-up of the wage rates and conditions in the Award.
3. The parties are committed to the on-going pursuit of appropriate wage rates and conditions relevant to the on-site construction sector of the metal and engineering industry.

And -

4. The parties further recognise that certain impediments exist to the finalisation of the Award at this time and that the award created represents a starting point for the on-going negotiation of wage rates and conditions.

And I would assume Mr Clues will now rise to agree with that position.

COMMISSIONER WATLING: Right, well we'll wait for him to do this. He's now getting to his feet - he looks in good form.

MR CLUES: Thank you, Mr Commissioner. In relation to this Memorandum of Understanding, the TCI being party to it does understand those four points as has been alluded to by Mr Baker.

COMMISSIONER WATLING: You understand them?

MR CLUES: We understand them and we accept them as being those terms of the Memorandum of Understanding, the TCI being party to it.

COMMISSIONER WATLING: Right. I just - the mines and metals are not parties to this I note.

MR BAKER: As it stands at the moment, sir, they're not parties to the award, but neither is anybody else I suppose are they?

COMMISSIONER WATLING: Good point. You have to understand that all the people along here this morning are really interveners except you, the applicant. But anyway - Mr Knott?

MR KNOTT: In regard to the Memorandum of Understanding, when the award interest matter comes on we would be in a position at that stage to state whether we had any difficulty with it or not. At the moment, if I could use a line that a union official often uses on me, that we haven't had a chance to consult with our members in respect of this memorandum. But I don't believe we'd have any difficulty with it and we'd be placing that formally on the record when the award interest matter comes on.

COMMISSIONER WATLING: I think it just recognises that it is a starting point only and we're not making it as though - or in its entirety at this stage and it's a thing to get it going so when we repeal the Mechanical Engineers and Founders Award people on construction sites are left award-free.

MR KNOTT: Thank you.

COMMISSIONER WATLING: Right. Any further submissions? No further submissions. Right well I'll indicate to the parties I'll hand down a written decision in due course. It will be in favour of the application to establish a new award arising out of the restructuring program for the Mechanical Engineers and Founders Award and I also note the Memorandum of Understanding that is only a starting point and it will be finalised at some stage in the future.

I'm not too sure when my written decision will be handed down. It will contain an operative date as suggested by Mr Baker, and that being the same operative date as the repeal of the Mechanical Engineers and Founders Award and the finalisation of the making of the Metal and Engineering Industry Award. It will be open to the parties after the decision is handed down with the operative date - or will be open to any interested organisation or any organisation that feels they have an interest in the award to make application in accordance with the Act to seek that interest. Thank you for your participation. The matters before us this morning are now finished. Thank you.

HEARING ADJOURNED