

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 4059 of 1992

IN THE MATTER OF an application by
the Australian Meat Industry
Employees Union to vary the Meat
Trades Award

re structural efficiency exercise
in the retail section of the meat
industry

COMMISSIONER GOZZI

HOBART, 6 November 1992

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER GOZZI: Could I have appearances in that matter, please?

MR J.E. SWALLOW: SWALLOW, J.E., AMIEU.

COMMISSIONER GOZZI: Thank you, Mr Swallow.

MR T.J. EDWARDS: If it please the commission, EDWARDS, T.J. and with me MR M.D. FLYNN, for MATFA and TCI.

COMMISSIONER GOZZI: Thank you, Mr Edwards. Mr Swallow?

MR SWALLOW: Well, Mr Commissioner, the reason why I have the selected the retail section of the industry to start is basically a very simple one as it ought to be relatively easy. The - the classifications in the levels are currently being reviewed through the research department of the ACTU, in Melbourne. That should be - that should be finalised in a week or two.

When they are finalised they will - we will be in a position to commence the retail section. There is minor alterations having in mind the industry - industry based unions. I believe you will find that the clerks have been included and a few other things have been included in the retail area as far as classifications go and levels.

COMMISSIONER GOZZI: Sounds interesting. What the -

MR SWALLOW: When that is -

COMMISSIONER GOZZI: So, what are you saying, clerks are proposed to what?

MR SWALLOW: Well, they will be put on a level equal to whatever. For example, they might be put on a level as a cashier, and that sort of thing.

COMMISSIONER GOZZI: Right.

MR SWALLOW: Just to make it very simple, a very simple award, easy to understand and that is what I believe restructuring and efficiency is all about. When that is done the next one is the slaughtermen's area and it - the same will be done in that sort of area. There is just a few there that needs minor alterations and it just seems to me that it would be beyond, almost beyond the ridiculous if we, in Tasmania, decided to go away to every other state in Australia is not going to go.

And it just seems to me that if there is going to be levels similar to the Metal Trades Award in the retail, the smallgoods and the processing sections, it would be a little bit ridiculous for us to do any other -

COMMISSIONER GOZZI: So, what the ACTU classification review is looking to base the structure on metal trades relativities?

MR SWALLOW: Oh, basically, basically.

COMMISSIONER GOZZI: So, what would be the 100 per cent rate? Would that be -

MR SWALLOW: The 100 per cent rate would be -

COMMISSIONER GOZZI: The general butcher rate or?

MR SWALLOW: Yes, the general butcher rate. There will be an appendix to cover supermarket - the supermarket area, but basically that is what it will be.

COMMISSIONER GOZZI: And you would vary the - you would look at the classification structure up and down from that 100 per cent rate?

MR SWALLOW: Yes, yes. I believe once we get underway we will finish up a long way in front of what they would at a national level, but it just seems to me that if there is going to be one retail section in the industry throughout Australia, there is only one way for us to go, and that is - as far as classifications go.

COMMISSIONER GOZZI: Because the general butcher rate is, of course, ahead in this state compared to the -

MR SWALLOW: I understand that.

COMMISSIONER GOZZI: So, how are you -

MR SWALLOW: But we are behind in a lot of other areas. For example, we are behind in the apprentice areas.

COMMISSIONER GOZZI: So, you would have 100 per cent rate a lot higher in this state.

MR SWALLOW: No. No, I would not be attempting to do that. If the 100 per cent rate, for example, is going to be \$420, we will just say for an example.

COMMISSIONER GOZZI: Right.

MR SWALLOW: Right? I would not, I would not have the gall to come and expect you to make the 100 per cent rate in Tasmania 435.

COMMISSIONER GOZZI: Yes, but you want to be -

MR SWALLOW: Because I would know I would be wasting my time and yours.

COMMISSIONER GOZZI: Well, yes, you may be, I do not know. I am just simply saying that currently the general butcher rate is higher here than on the mainland.

MR SWALLOW: Oh, yes, about 14 maybe \$15.

COMMISSIONER GOZZI: Yes, I have not looked at -

MR SWALLOW: And that comes about -

COMMISSIONER GOZZI: - it recently.

MR SWALLOW: - that comes about by the present federal award you have got a rate for every state. When the new structure comes out it will be one rate apply in every state.

COMMISSIONER GOZZI: What, and is it intended to use the minimum rates adjustment?

MR SWALLOW: Yes. So, consequently once that document is prepared I would believe we should not take very long. And it could well be - it could well be when it is prepared we might be even, although I am a bit of an optimist at times, we might be even get agreement with my two friends there. You never know. And that would make it - all of it easier. We should be able to clean it up in days rather than years that it has taken one or two cases that we have been involved in.

MR EDWARDS: There is optimism and there is foolishness, John.

COMMISSIONER GOZZI: Well, I will see what Mr Edwards has to say. Thanks, Mr Swallow.

MR FLYNN: You had better not reply to that.

MR EDWARDS: I will take instructions on that.

COMMISSIONER GOZZI: Now, Mr Edwards, what are you going to tell me.

MR EDWARDS: Well, Mr Flynn told me I had better take instructions on the last part of that. I will not comment on it.

COMMISSIONER GOZZI: That goes without saying, I think.

MR EDWARDS: Yes, I think you are probably right there, sir. I think the first observation we would like to make, commissioner, is that we do not necessarily agree with the most appropriate way to proceed with structural efficiency in

the Meat Trades Award is to deal with the retail shops area first. This is the same argument that I understand is perplexing the parties at a national level where the AMIEU request is to do retail, then smallgoods, then processing.

Whereas I understand the position adopted by the employers on the mainland is that the most complex and the most hotly contested area will be the processing area, and that that area

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COMMISSIONER GOZZI: What, the Abattoirs Award, you mean?

MR EDWARDS: Yes, in the case of this state it would be the Abattoirs Award. In the case of the mainland states it is the process - the meat processing section of the federal Meat Industry Award. We are of the view, commissioner, that the most appropriate place to start and the area in need of the - or most in need of the revision is the Abattoirs Award and that is the area that requires -

COMMISSIONER GOZZI: Why don't you do them both together? I mean, there is a revolutionary thought.

MR EDWARDS: No, we have tried that before, commissioner, and frankly I think we get so perplexed between the three parties, and by that I include the commission, we all get so confused and perplexed that we never seem to get anywhere. We end up hiving bits off here and bits off there, if I recall the 38-hours week case as an example.

COMMISSIONER GOZZI: They can be listed on different times and not together, you see. That would solve the confusion.

MR EDWARDS: Well, I would not have any particular objection to that, commissioner. The application by the AMIEU at this stage is, as I understand it, limited to retail shops which we think is unduly restrictive. And we are currently seeking instructions as to whether or not we have the authority to lodge an application, certainly for the Abattoirs Award, and perhaps in addition to that the other divisions of the Meat Trades Award as well so that the issue can be looked at collectively.

We have a view that the structure, the classification structure, once determined should if possible be a single integrated classification structure for each award. In others words, there should be one in the Meat Trades Award not three, or four, or five, which you could have; you could have retail shops, you could have supermarkets in an appendix, if Mr Swallow's submission is correct, and you could have clerks.

You have then got all the maintenance classifications that are currently contained in the award. You have engine drivers and firemen's classifications in the award. You have got cool store divisions, you have got stores division -

COMMISSIONER GOZZI: The lurks and perks classifications.

MR EDWARDS: They go on, and on, and on, and we believe that if at all possible the outcome would best be a single integrated classification structure that applies to the entirety of the award.

COMMISSIONER GOZZI: In both awards?

MR EDWARDS: One in each award with an abolition of the current divisionalised nature of the awards, which will achieve to a substantial extent the outcomes Mr Swallow was looking for, and that is a single, easier to read award. If you have only got one division instead of a number then it certainly does make it a hell of a lot easier to read. And we do not see any particularly good reason for differentiating supermarket butchers, for example, from those in the retail shop for the general butcher.

So, having made those observations, I am not quite certain where we go from here. It seems evident Mr Swallow's position is not able to be advanced to the commission today because it is still in the hands of the ACTU research department. But, I think, as the commission is well aware employers do have an alternative classification structure that we will probably be advancing as the case proceeds.

COMMISSIONER GOZZI: Yes, thank you, Mr Edwards. Mr Swallow, do you have anything to say about what Mr Edwards' said?

MR SWALLOW: Only to say that what Mr Edwards said is correct. That is what I mean when I just gave the example of the clerks and the cashiers. The same will apply to all of attendance and whatever. It seems to me -

COMMISSIONER GOZZI: You will be able to have an integrated structures?

MR SWALLOW: Yes, yes.

COMMISSIONER GOZZI: Yes.

MR SWALLOW: It seems to be ridiculous in this modern day and age to have an award like we have got.

COMMISSIONER GOZZI: Oh, well look, I - fundamentally the idea sounds okay. I do not know what sort of problems you will come across when you finally embark upon the exercise.

MR SWALLOW: Yes, that could well be and I just -

COMMISSIONER GOZZI: Look let me just - rather than going on with this, let me just say I had half expected a different argument this morning. There are decisions from the commission as variously constituted which in effect say they will not look at one section of an award in isolation. Now, I do not want always to put a barrier in the way in respect of these applications, not that it is going anywhere at the moment anyway, but the commission has taken the view that an award should be reviewed in its entirety, not just part of it.

Now, it would not bother me at all if we had an application which was an application to review the award in its entirety and it was done on a structured basis. But you see, an application, just looking at one section of it really precludes looking at the rest of the award. You are -

MR SWALLOW: No.

COMMISSIONER GOZZI: - you are contemplating here, I think, further applications. Now -

MR SWALLOW: No.

COMMISSIONER GOZZI: - and there is a fundamental difference between what you are putting, Mr Swallow, and what Mr Edwards is putting. Now, Mr Edwards - and I do not know what sort of discussions you have had on this - but it is my understanding that if you are going to look at a single award structure, and you seem to be saying that that is what you are looking for as well, then by the very definition of doing that you have to have the award before you in its entirety.

And so we have got another problem at this point in time that sitting alone I do not think I can look at sections of the award independently anyway because the wage fixing principles prohibit it and I do not know what the feds are doing, what the federal commission is doing about that, but it is their wage fixing principle. And I would be surprised if they are not looking at the total award.

MR SWALLOW: I can guarantee you there will be three awards only in the meat industry next year.

COMMISSIONER GOZZI: Which will be?

MR SWALLOW: Retail, smallgoods and processing.

COMMISSIONER GOZZI: Well, but in doing that that then subsumes all the other bits and pieces that are around. It will - that outcome will be an outcome of the total review of

the industry that you have got retail, smallgoods, processing. And that is the end of the exercise; right? I mean, that will be the outcome of the review of the current awards that apply, according to what you are saying, anyway; will not it?

MR SWALLOW: Yes, it is a bit difficult too, you see. What we have - what we have always had before us in the past, we have had before us two awards. The union's proposal is that we will now, next year, have three awards.

COMMISSIONER GOZZI: Yes. But to get to that position you really need to have the award before me in its entirety and you can argue for that, there is no -

MR SWALLOW: Well, that is the intention.

COMMISSIONER GOZZI: - there is no problem about it, but -

MR SWALLOW: - that that -

COMMISSIONER GOZZI: - the review ought to be in respect to the award in its entirety because you might not get agreement to the course of action you propose.

MR SWALLOW: Well, you can bet your life I will not get agreement.

COMMISSIONER GOZZI: Well - so the award - the subject matter needs to be before me in its entirety.

MR SWALLOW: Yes.

COMMISSIONER GOZZI: And the structural efficiency principle contemplates that anyway.

MR SWALLOW: Well, that would follow, though, would not it? If I -

COMMISSIONER GOZZI: Well, I am happy for you to amend the application.

MR SWALLOW: - right, we have got a - no. I think - well, as far as I - as far as I am concerned it covers it. I have got a claim in for the retail area to be done; right?

COMMISSIONER GOZZI: No, your application is this, Mr Swallow, it says: to carry out a structural efficiency exercise in the retail section of the meat industry.

MR SWALLOW: Yes.

COMMISSIONER GOZZI: And I am saying that the principles supported by decisions of this commission require a review of the award in toto.

MR SWALLOW: Of course, to get to that.

COMMISSIONER GOZZI: Right. So, I am quite - yes, that is right.

MR SWALLOW: Right?

COMMISSIONER GOZZI: If you want a separate thing for that you can argue that provided the award is before me in its entirety, and this application does not put the award before me in its entirety. So, what I am saying is if you want to amend it to put the meat industry - Meat Trades Award before me in its entirety, you can argue as part of that exercise the retail section ought - you want it to be a separate retail award. If that is what you want to pursue. And Mr Edwards, on behalf of TCI and MATFA might want to argue something different.

MR SWALLOW: Well, obviously they will.

COMMISSIONER GOZZI: Well, I do not know. I do not know.

MR SWALLOW: You see, at the end of the day before you you will have a proposition from the union as far as classifications and levels or whatever, and you will have one from the Meat and Allied Trades Federation.

COMMISSIONER GOZZI: Yes. Yes, and in that regard -

MR SWALLOW: And you will - right - you will - your role will be to determine what you think -

COMMISSIONER GOZZI: Yes.

MR SWALLOW: - is appropriate for the industry; right?

COMMISSIONER GOZZI: That is right, yes.

MR SWALLOW: Now, what I am saying is, that they are going to be different; they are different now.

COMMISSIONER GOZZI: Yes.

MR SWALLOW: Right? And either you - I think you would be expecting too much if you think there is going to be agreement; right?

COMMISSIONER GOZZI: Yes.

MR SWALLOW: So, you are going to be in a position - your role will be to determine what you consider. Now, all I am saying is what you consider should not be out of kilter with

what the final decision in the retail section is going to be at a national level; that is what I am saying.

COMMISSIONER GOZZI: Yes, well you can argue that, but for me to be able to consider it I need to have the application - the award before me in its entirety.

MR SWALLOW: But you have.

COMMISSIONER GOZZI: No, I have only got the meat trades - the retail section before me.

MR SWALLOW: Yes, but to get to the retail - to get to a retail award you can only get it from one spot and that is out of that Meat Trades Award.

COMMISSIONER GOZZI: Yes, I - we will just go off the record for a minute.

OFF THE RECORD

COMMISSIONER GOZZI: All right, following off the record discussions, the particulars in the application have been deleted and the application amended to read as follows: To carry out a structural efficiency exercise in the Meat Trades Award to (1) create a new Retail Trades Award based upon but not in any way limited to the retail section of that award, and (2) the other parts of the Meat Trades Award to be also subject to structural efficiency measures.

Mr Edwards, do you have any objection to that amendment?

MR EDWARDS: Well, rather than an objection, in the first instance, commissioner, I would have a question about the creation of a new Retail Trades Award. As I think you would concede precedent would have it that an exercise of creating a new award in this commission involves, in the first instance, an application to create a scope of a new award. I do not quite see how we are going to achieve that in the context of reviewing an existing award.

I would have thought that to create a new Meat Trades Retail Award, or whatever it might be called, would require an application to create a new award, the first of step of which would be to create the parties - sorry, the title and scope clause.

COMMISSIONER GOZZI: Let me refer your attention to the Pasminco Rosebery (Mining) Award and in that matter we start off with the mining - The Rosebery (Mining) Award and the parties addressed themselves to the whole range of structural efficiency measures. As a result, a new award document was

put forward for endorsement of the commission, that was heard by way of a separate application arising out of the review that they did, that award was then made with respect to title and scope.

The hearing was then adjourned to enable determination of interest proceedings to get under way. Once those determination of interest proceedings were finalised, the award was then made with respect to all the other matters that had previously been agreed to between the parties.

MR EDWARDS: That is not, commissioner, in any way inconsistent, I do not think, with what I have asked by way of a question.

COMMISSIONER GOZZI: I mean, you -

MR EDWARDS: I have been involved in the making of a number of awards in this commission and it is quite a lengthy process and I just wanted to ensure that I was right in saying that that exercise still is required to be done as part of the total exercise.

COMMISSIONER GOZZI: Yes, I think -

MR EDWARDS: In that case, and bearing in mind what you have said, we have no objection to the amendment of the application in the manner sought. We do not, in saying that, in any way indicate our agreement that that is the way things ought to go and -

COMMISSIONER GOZZI: No.

MR EDWARDS: - that will be the case for argument at a later time.

COMMISSIONER GOZZI: I mean, it simply allows - the intention is to bounce the ball to reflect what the applicant wants to do and the processes would be that there would be material put before the commission to say, well, this is what the applicant wants. The TCI and MATFA would respond and if the new award was to be made then application for that new award would have to be made at that time. And that might reflect the agreed position of the parties. But the processes would still have to be gone through.

MR EDWARDS: No, that is as I understood it, commissioner. I was just seeking clarification.

COMMISSIONER GOZZI: I mean, the alternative, the alternative is that you start again, you frame the application differently. We are doing it a bit on the run, but I do not see any problem, honestly, with that process at all.

MR EDWARDS: No, I do not see any problem with it, I simply asked for clarification.

COMMISSIONER GOZZI: Yes. The intention is, as a consequence of the structural efficiency review, for the AMIEU to put in place a new retail award, which may or may not be agreed to by the employers. And if that position is finally resolved by way of a structural efficiency proceedings, let us say the AMIEU is successful, then the award making process would still have to follow.

MR EDWARDS: Yes.

COMMISSIONER GOZZI: And people would still have the right to seek an interest in the award, et cetera, et cetera. I mean, this - it is a long -

MR SWALLOW: I realise that.

COMMISSIONER GOZZI: - a long exercise. You see, I think some of the marine, poultry awards probably headed down a similar track. I am not quite sure of the -

MR EDWARDS: Not identical, as I understand it, commissioner.

COMMISSIONER GOZZI: - of the exact history.

MR EDWARDS: I was involved in those back at the very beginning. What we had there was a number of applications by the AWU to create new awards rather than deal with the content of the existing award. And the same can be said for the Building and Construction Industry Award exercise, the Metal and Engineering Industry (Tasmania) Award and the Metal and Engineering Industry (On-Site) Tasmania Award where applications were made for new awards rather than a review of the old award. I do not think anything swings on it.

COMMISSIONER GOZZI: Well -

MR EDWARDS: I mean, the same effect can be created whichever way you go.

COMMISSIONER GOZZI: Yes, I just do not want it to hit a rock, you know, later down the track, whenever that may be. And it may be, to cover the situation, that you just put in an application to make a new Retail Trades Award to cover the meat retailing outlets.

MR SWALLOW: We can do that.

COMMISSIONER GOZZI: I mean - and that application could be joined with this, whatever.

MR SWALLOW: I would have thought you do that down the track a bit further.

COMMISSIONER GOZZI: Well, if you want a base out of - if you want it based on the existing retail trades award, you want to structurally improve that award, as I understand it, and there would be views from the employers and I am saying that, really from a structural efficiency point of view I want to look at the award in toto and it could well be at the end of the day that as part of that exercise a new award might be created.

But in doing that, creating that award, there would still be a process that would have to have - that would have to be gone through. I mean, if you make an application for a new award now you have got to provide, of course, what it is that you want in that award. I am not sure that you are ready to do that.

MR SWALLOW: No, I am not in a position to. Will not be for about three weeks with all that stuff.

COMMISSIONER GOZZI: Well, what is the next step with this application?

MR SWALLOW: Well, would I make an application for a new Retail Award?

COMMISSIONER GOZZI: Just go off the record for a minute.

OFF THE RECORD

COMMISSIONER GOZZI: The application is adjourned to Tuesday, December 15.

MR SWALLOW: That should give me plenty of time.

MR FLYNN: Bad day, bad day. It is my wedding anniversary, bad day.

MR EDWARDS: You have got to get there yet, Mike.

MR FLYNN: What time; 9 o'clock.

COMMISSIONER GOZZI: 10.30 am.

MR FLYNN: 10.30.

MR EDWARDS: Whilst we are on the record, commissioner, if I could perhaps just -

COMMISSIONER GOZZI: I think we are off the record, are not we?

MONITOR: No, we are on.

COMMISSIONER GOZZI: On the record, okay. 10.30.

MR EDWARDS: If I could just pose a question. I did indicate earlier that we are currently seeking instructions as to whether or not we can or should be putting in an application in respect of the processing area, ie the Abattoirs Award. If we do it may be appropriate for it to be listed on the same day. Perhaps not necessarily at the same time.

COMMISSIONER GOZZI: Oh, well we can list it.

MR EDWARDS: If we do.

COMMISSIONER GOZZI: If you do we can list it on the same day.

MR EDWARDS: I just flag it, I -

COMMISSIONER GOZZI: And I think also you might want to frame an application for the Meat Trades Award in any event.

MR EDWARDS: I think you are right.

COMMISSIONER GOZZI: All right, these proceedings are adjourned till that time. Thank you.

HEARING ADJOURNED