



TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009

1051990

COMMISSIONER HUNT

AG2023/320

s.185 - Application for approval of a single-enterprise agreement

**Application by Cannon Hill Services Pty Limited T/A Australian Country
Choice & Australian Country Choice Production Pty Limited T/A Australian
Country Choice
(AG2023/320)**

Brisbane

10.28 AM, THURSDAY, 13 APRIL 2023

PN1

THE COMMISSIONER: Good morning, I will take the appearances, thank you.

PN2

MR D WILLIAMS: Good morning, Commissioner, and good morning, Commissioner.

PN3

THE COMMISSIONER: I will say from the outset then I have Commissioner Zoran with me observing.

PN4

MR WILLIAMS: The warmest welcome from our side of the Bar table. Thank you, Commissioner. I'm Williams, Dan Williams; Williams, initial D. I'm not certain whether the issue of permission has been formally considered. I know that representatives from my team have been involved in processes today, some of them formal, some of them less so, including a directions hearing. So I assume the matter has been dealt with, but if not I formally make application for permission to appear, and I can make brief submissions if there's any requirement to do so.

PN5

THE COMMISSIONER: Thank you. You have got Ms Hamberger with you at the Bar table, thank you. Yes?

PN6

MR C BUCKLEY: Yes, good morning, Commissioner. Good morning, Commissioner. If it please the Commission my name is Buckley, initial C, industrial officer with the Australasian Meat Industry Employees Union.

PN7

THE COMMISSIONER: Thanks, Mr Buckley. Any objection to the applicant being represented?

PN8

MR BUCKLEY: No objection at all.

PN9

THE COMMISSIONER: All right, leave is granted then. Thank you.

PN10

MR WILLIAMS: Commissioner, in relation to Mr Buckley's appearance we had foreshadowed - you might recall that my client didn't consent to Mr Buckley's union appearing. We don't consent, but I don't propose to say any more about it. I have seen your preliminary ruling, and we've made the submissions we intend to make about it and you consider those and make (indistinct) your ruling, but I have nothing further to say about that.

PN11

THE COMMISSIONER: Thank you. The union is here as a helpful assistant. All right. So we have got, what, three witnesses for the applicant and one for the respondent?

PN12

MR WILLIAMS: Yes.

PN13

THE COMMISSIONER: Are there any preliminary issues that we need to deal with?

PN14

MR WILLIAMS: The ones that I had in mind have been dealt with already. I'm prepared to proceed.

PN15

MR BUCKLEY: The only issue I raised, which was raised in the AMIEU submissions was as to the admissibility of one paragraph of Mr Els's witness statement.

PN16

THE COMMISSIONER: All right. Well, when he's in the box perhaps you can take me to that paragraph and I will deal with that then. All right.

PN17

MR WILLIAMS: Yes, thanks, Commissioner. So we rely - and I will refer to the digital court book with references - we rely on the Form F16 at page 4, the Form F17 with attachments commencing at page 11, a copy of the proposed agreement at page 64. I note that the notice of employee representational rights and (indistinct) documentation have been provided to you, and they're in the digital court book as well. And then we rely on the applicant's outline of submissions at item 7, page 125. And we will rely on witness statements of Mr McLeod at 138, Mr Lingard at 142, Mr Els at 146, plus attachments, and then there are submissions in reply and the supplementary witness statement of Mr Els, which we will come to of course.

PN18

Commissioner, I think we can be pretty efficient this morning. I understand from the exchange of correspondence, which I think is now common ground, there are two matters to be decided or to be determined by you. They include whether or not the cohort was fairly chosen, which arises under section 186 of section 3, and then whether or not the employees who voted on the agreement genuinely agree to it, which engages section 186(2)(c) and then refers to section 188 which defines what genuine agreement means, and in turn it refers to procedural requirements in section 180. I understand the matter of contention is probably limited to section 5, 180(5).

PN19

THE COMMISSIONER: Yes, 180(5).

PN20

MR WILLIAMS: That is the quality of the information given to employees. They seem to be the issues before you, unless of course someone tells me otherwise, and if that's correct then I call my first witness Mr Lingard.

PN21

THE COMMISSIONER: Mr Lingard is your first witness?

PN22

MR WILLIAMS: Yes.

PN23

THE COMMISSIONER: Mr Els is in the courtroom, so what are you going to do with him?

PN24

MR WILLIAMS: No, we kept him outside, Commissioner. That's Mr Bird you can see there. We all look the same after a while.

PN25

THE COMMISSIONER: Very good. All right, thank you. We will have Mr Lingard then.

PN26

MR WILLIAMS: His statement can be found at digital court book page 142. Associate, I understand Mr Lingard will take an affirmation.

PN27

THE COMMISSIONER: Just so you know I tend to ask lots of questions of witnesses. I'm not sure if you know that, Mr Buckley. That's my style. Of course after you ask questions.

PN28

MR WILLIAMS: I won't be very long.

PN29

THE ASSOCIATE: For the record can you please state your full name and address.

PN30

MR LINGARD: Trent Robert Lingard, (address supplied).

<TRENT ROBERT LINGARD, AFFIRMED [10.34 AM]

EXAMINATION-IN-CHIEF BY MR WILLIAMS [10.34 AM]

PN31

MR WILLIAMS: Mr Lingard, your name is Trent Lingard?---Yes.

PN32

And you're currently employed as a process officer by Australian Country Choice?---Yes.

PN33

And your location of work is at the Cannon Hill facility?---Yes.

PN34

And you have worked in the manufacturing team at Australian Country Choice as a process officer for approximately 16 years?---Yes.

PN35

In fact since you were 18 years old?---Yes.

PN36

Mr Lingard, have you made a statement to the Commission in these proceedings?---I have, yes.

PN37

Do you have a copy of your statement with you?---I do.

PN38

Are the contents of that statement true and correct to the best of your knowledge?---Yes.

PN39

Thank you. I tender Mr Lingard's statement.

TRENT ROBERT LINGARD

XN MR WILLIAMS

PN40

THE COMMISSIONER: Any objection?

PN41

MR BUCKLEY: None, Commissioner.

PN42

THE COMMISSIONER: All right. It will form part of the digital court book. I'm not going to mark exhibits separately. We will admit it.

PN43

MR WILLIAMS: Thank you, Commissioner, that's the evidence of Mr Lingard.

PN44

THE COMMISSIONER: You will be asked questions in cross-examination now, Mr Lingard. Make sure you use a loud voice, okay, and you need to give oral answers?---Okay.

PN45

Thank you.

CROSS-EXAMINATION BY MR BUCKLEY

[10.35 AM]

PN46

MR BUCKLEY: Thank you, Commissioner. Mr Lingard, in your statement you talk about a meeting that occurred on 14 December 2022?---Yes.

PN47

That's the meeting at which Mr Els and Molly Auvaava sit down with you and talk about the plans for the 2023 enterprise agreement. Okay?---Yes.

PN48

And at that meeting Molly Auvaava, she gives - is it a PowerPoint presentation to the meeting?---Yes.

PN49

About what the company wanted in terms of that enterprise agreement?---Yes.

PN50

As I understand it there are seven employees of ACC who work in the area that's covered by this agreement. Were there seven employees at that meeting?---Yes.

PN51

It's made clear to you in the meeting that ACC wants to bring in new rates or lower rates of pay for new employees; that's correct?---Yes.

PN52

But it was made clear to you at that meeting that your wages and the wages of the other six employees already employed by ACC they weren't going to be decreased?---Yes.

*** TRENT ROBERT LINGARD

XXN MR BUCKLEY

PN53

Is that right?

PN54

THE COMMISSIONER: A loud voice, please, and oral answer. Yes?---Yes.

PN55

MR BUCKLEY: Okay. And it was made clear to you that the existing employees of ACC would get a wage increase?---Yes.

PN56

Now, as I understand it at this stage the company didn't tell you what these new rates of pay for new employees were going to be, did they?---No.

PN57

They told you that that would come up in the bargaining meetings; is that right?---Yes.

PN58

So we've got this meeting which happens on 14 December 2022, and in your statement you talk about meetings that occur in early February 2023 when the detail of the enterprise agreement is explained to employees. Okay?---Yes.

PN59

So between those meetings I take it there were some bargaining meetings; is that right?---Yes.

PN60

Can you tell me how many bargaining meetings there were during that period?---Two or three I think.

PN61

All right. Did you go to all of the bargaining meetings?---Yes.

PN62

Now, can you tell me at which of those bargaining meetings the company told you what it wanted the new rates to be for new employees?---It wasn't discussed at those first lot.

PN63

Well, I think you said there were two or three bargaining meetings in between the meeting in December and the meetings in February; is that right?---Yes, for our pay rate.

PN64

So whether it was two or three at any of those bargaining meetings did the company tell you what it wanted the new rates for new employees to be?---No.

TRENT ROBERT LINGARD

XXN MR BUCKLEY

PN65

Is it the case that the first time you learn what these new rates would be was at the meetings in February 2023 when you were given an explanation of what the enterprise agreement meant?---Pardon?

PN66

THE COMMISSIONER: Sorry, what was your answer?

PN67

MR BUCKLEY: I believe he said I beg your pardon. He asked me to - - -

PN68

THE COMMISSIONER: I know you're a bit nervous there, Mr Lingard. Have some water, but you will need to use a loud voice, okay?---Yes.

PN69

Thank you.

PN70

MR BUCKLEY: Have you got a copy of your statement in front of you?---I do, yes.

PN71

If you can have a look at paragraph 11?---Yes.

PN72

Which is page 144 of the court book, Commissioner. You talk there about getting an email off Mr Els, is that right?---Yes.

PN73

And it's got an explanatory document and a PowerPoint presentation?---Yes.

PN74

And on that day you also have a meeting with Mr Els, is that right?---Yes.

PN75

Is it the case that that's the first time that you learn what the rates of pay for new employees would be?---Yes.

PN76

All right. So you talk in your statement about having - there's a meeting on 2 February and there's another meeting on 6 February with Mr Els; is that right?---Yes.

PN77

Can you tell me why there were two meetings; was it just the first meeting didn't get through everything or - - -?---The first meeting I believe what I can remember was the PowerPoint presentation and just going, moving forward. And the one on the 6th was going through the difference between the new EBA and the old EBA, and what changes.

*** TRENT ROBERT LINGARD

XXN MR BUCKLEY

PN78

And at those meetings, or at one of those meetings you were told - again it was confirmed that the pay rates of you and the other existing employees that would be kept in place and then increased by 3 and a half per cent when the new agreement came in?---Yes.

PN79

Were you told that the pay rates of new employees would be lower than what they were in the 2018 enterprise agreement?---Yes.

PN80

Did you understand that that meant all of the pay rates in the 2023 agreement would be lower than all of the pay rates in the 2018 agreement?---Yes.

PN81

Is it the case that you weren't really concerned with what the pay rates were for the new employees, because you knew that yourself and the other existing employees were going to get a pay rise?---No.

PN82

It mattered to you that new employees would be getting a lower rate of pay than they would have done under the 2018 agreement; is that right?---Yes.

PN83

Was the reason for that that the company had told you that the business needed to have lower wage rates in order to be competitive and to ensure your job security?---Yes.

PN84

Thank you, Commissioner, that's all I have for Mr Lingard.

PN85

THE COMMISSIONER: Anything arising?

PN86

MR WILLIAMS: Commissioner, I'm just waiting for instruction on one point. I wonder if we - - -

PN87

THE COMMISSIONER: You will have time. I have a document that I would like you to all have a look at. It's something that I prepared, and I will give you plenty of time to look at it. Everyone can have a copy, including the witness. Any extras can go to the gallery, I don't mind. Parties, and, Mr Lingard, you're the witness at the moment, I prepared this document to look at the final rate of pay in the 2018 agreement with the classification structure as it currently exists, because we know that this agreement whilst expired is current. Then all of the rates thereafter are that within the proposed agreement.

*** TRENT ROBERT LINGARD

XXN MR BUCKLEY

PN88

The items in red are marked where there is a reduction from the 2018 agreement with the final rate of pay. I have inserted the percentage increase or decrease for the first pay period for both the food manufacturing roles and the logistics and warehouse roles, and where they go backwards they're in red and where they are greater than the final rate of pay in the 2018 agreement they are in orange. So unless there's any objection, Mr Williams, I propose to ask Mr Lingard some questions.

PN89

MR WILLIAMS: No.

PN90

THE COMMISSIONER: Very good. I appreciate you haven't had much time to look at it. Mr Lingard, looking at this - I'm not sure if you're familiar with Excel spreadsheets, but does this make any sense to you?---No.

PN91

All right. We will walk slowly through it, okay. So the first column there is 2018 agreement final rate of pay. Now, are you a Level A or a Level B?---Level B.

PN92

All right. So you're guaranteed under the current agreement, the 2018 agreement, no less than \$23.59. Okay?---Okay.

PN93

That's what you're guaranteed. Whatever you're paid is whatever you're paid, but that's what you're guaranteed and that's what the commitment is between the parties. And your food manufacturing, aren't you?---Yes.

PN94

Because it's the other fellow who's the forklift operator. Under the proposed agreement you would be guaranteed no less than \$25.50 an hour?---Yes.

PN95

That represents an 8.1 per cent increase. So you've given evidence that you were told that the rates under the new 2023 agreement would be less, but in fact the company is proposing rates of 8.1 per cent greater for Level B food manufacturing roles. So you weren't told that, were you?---No.

PN96

You were told that the rates were going to be lower than the 2018 agreement, weren't you?---Yes.

PN97

And the rates for Level A at minus 3.6 per cent above they're lower, and that's what you were told, that they would be lower; is that right?---Yes.

*** TRENT ROBERT LINGARD

XXN MR BUCKLEY

PN98

All right. The Level C rates for food manufacturing roles at \$23.80 as opposed to the last rate of pay in the 2018 agreement of \$23.17 represented a 2.7 per cent increase. You weren't told that either, were you?---No.

PN99

I'm sorry?---No.

PN100

And your evidence earlier was that you were told that all the rates would be lower?---Yes.

PN101

And going over to the logistics and warehouse roles, and this is the classification, so Mr Els has already provided the Commission the classification matchings. He has said that a Level 4 logistics and warehouse role is equal to a Level A role under the 2018 agreement, and if you look at the first pay period there under the logistics and warehouse roles title that role if this agreement is approved they get a 5.11 per cent increase to the last known rate in the 2018 agreement. You weren't told that?---No.

PN102

And you weren't told that the Level 3 rate would be getting a 10.22 per cent increase?---No.

PN103

Were you told that the Level 1 role was going to get a 1.99 per cent increase?---No.

PN104

And were you told that the Level 2 rate being the forklift driver would be getting an 18.3 per cent decrease?---No.

PN105

Would you expect to have been told this?---Possibly. No.

PN106

It doesn't match with what the PowerPoint says and what the explanation in the long table says, does it?---No.

PN107

Do you want to be taken to that? Have you got the court book in front of you? There's red numbers down the bottom. That's what we're interested in. If you can go to page 48. I think you will eventually turn it on its side when you get to page 48. At item 29 - are you there?---Yes.

PN108

You were provided this document, weren't you?---Yes.

PN109

Did you read it?---Yes.

*** TRENT ROBERT LINGARD

XXN MR BUCKLEY

PN110

So item 29, this says that if you're a current employee you will receive rates - and you're employed at the commencement of the proposed agreement and you receive rates higher than the proposed agreement then you will continue to receive these rates. You were comfortable with that, weren't you?---Yes.

PN111

And then if you go to item 31 where it says 'Wage increases' the explanation, and I will read it, it says:

PN112

This clause explains that the proposed agreement provides for an annual 3.5 per cent increase at the commencement of the agreement and 3 per cent on the anniversary of the agreement for each year thereafter. This represents an increase from the current agreement.

PN113

Now that you can see the rates on my calculations do you say that you were told that or you were told something different?---About the 3.5 and 3.33, yes, but not the spreadsheet.

PN114

Yes?---Yes.

PN115

Even without the spreadsheet though it says the agreement provides for an annual 3.5 per cent increase at the commencement of the agreement and 3 per cent on the anniversary of the agreement for each year thereafter. Do you think that's right when it's talking about a 3.5 per cent increase on the 2018 agreement?---Yes.

PN116

But it's not right. You know it's not right, don't you?

PN117

MR WILLIAMS: With respect, Commissioner, Mr Lingard is precisely correct. It's a matter for submission obviously, but it wouldn't be correct to say to this witness that it's not right, because for him it is.

PN118

THE COMMISSIONER: Well, I'm going through that, I haven't finished. This says that:

PN119

The clause explains that the proposed agreement provides for an annual 3.5 per cent increase at the commencement of the agreement and 3 per cent on the anniversary of the agreement for each year thereafter. This represents an increase from the current agreement.

PN120

That's not right for everybody, is it?---Yes.

*** TRENT ROBERT LINGARD

XXN MR BUCKLEY

PN121

It is right or it's not right?---Yes, it's right.

PN122

It's right for everybody?---For the existing employees, yes.

PN123

But not for current employees. You'd have to go back to their 2018 agreement, wouldn't you, to find out what their rates are?---What I understand is the current full-time employees will get the 3.5 and 3.33.

PN124

But is it right for everybody?---Yes.

PN125

How so?---We had a vote and everyone agreed that they were happy with it.

PN126

So is that what you understood?---Yes.

PN127

That that clause applied to existing employees and not to future employees?---Yes.

PN128

Do you think that today?---Yes.

PN129

All right. Do you want to go to the clause. Clause 11.3 is on page 76 of the court book. So it says:

PN130

This agreement will provide for four year agreement with an annual 3.5 per cent wage increase at the commencement of the agreement.

PN131

So who does that apply to; what was your understanding?---For us full-timers who are currently working there.

PN132

You thought that it only applied to current employees?---Yes.

PN133

Going back to the PowerPoint - sorry, going to your statement, and your statement is on page 142. On page 143 paragraph 9 you're talking about what Ms Auvaava explained to you?---Yes.

PN134

And this is December 2022?---Yes.

*** TRENT ROBERT LINGARD

XXN MR BUCKLEY

PN135

And things can change between December 2022 and when you are asked to vote for the agreement, can't they?---Yes.

PN136

But she's explained to you that for new employees the company would need to negotiate lower rates than those under the 2018 agreement because it needed lower cost structure. What was your understanding at that time as to who would they negotiate those rates with?---I don't understand that question, I'm sorry. What was - - -

PN137

So in December you're meeting with her and Mr Els?---Yes.

PN138

And they're saying we need to negotiate new rates?---Yes.

PN139

So that new employees get lower rates, and that's how we will be competitive?---Yes.

PN140

What was your understanding of who those new rates would be negotiated with?---They did a market research and just made the competitors costing and then a little bit above them to try and attract new business.

PN141

When you negotiate you're negotiating with somebody else, aren't you?---Pardon?

PN142

You were told at this meeting that they would need to negotiate lower rates than those under the 2018 agreement?---Yes.

PN143

So who did you understand the company would negotiate those rates with?---I'm not too sure.

PN144

You're not too sure?---No.

PN145

But you knew that it had to be under the 2018 rates?---Yes.

PN146

That's what you knew in December?---Yes.

PN147

And then it comes to February and you're presented with the proposed agreement?---Yes.

*** TRENT ROBERT LINGARD

XXN MR BUCKLEY

PN148

And do you go and have a look at schedule 2?---Yes.

PN149

You did?---Yes.

PN150

And Mr Els explained at paragraph 13 that a lower cost structure was required and the company had reduced the rates for new employees in the documents that you were being asked to approve to rates that were lower than the rates in the 2018 agreement. So did you believe that?---Yes.

PN151

And he also told you that only employees who are employed like you would receive the 3.5 per cent increase, and you believed that?---Yes.

PN152

All right. So you know today that the agreement provides for significant pay increases for, for example a Level 3, a logistics and warehouse role, at 10.22 per cent. You didn't know that, did you?---No.

PN153

Anything arising there for you, Mr Buckley?

PN154

MR BUCKLEY: No, thank you, Commissioner.

PN155

THE COMMISSIONER: Mr Williams?

PN156

MR WILLIAMS: Yes, thank you, there are some matters arising.

RE-EXAMINATION BY MR WILLIAMS

[11.01 AM]

PN157

Mr Lingard, have you got a copy of your statement there?---I do, yes.

PN158

Firstly, I think you in answer to a question from the Commissioner you said that there had been maybe two or three bargaining meetings. Is it possible that there were more than two or three?---Yes.

PN159

So it's possible that there were up to eight meetings in total?---Yes.

*** TRENT ROBERT LINGARD

RXN MR WILLIAMS

PN160

It's possible. Now, I know you won't remember the exact dates of them, so can I pass you a document. It's entitled 'EA explanatory document manufacturing 17 January 2023.' Commissioner, I don't have copies. I'm happy for there to be a pause while we get copies.

PN161

THE COMMISSIONER: The witness can have a look at it and Mr Buckley have a look and then I will have a look.

PN162

MR WILLIAMS: Yes, of course, thank you.

PN163

THE COMMISSIONER: We will get copies later if you wish to have it admitted.

PN164

MR WILLIAMS: I will probably admit it through Mr Els.

PN165

THE COMMISSIONER: Is it explained in the F17?

PN166

MR WILLIAMS: This document?

PN167

THE COMMISSIONER: No, but the number of meetings might be in the F17.

PN168

MR WILLIAMS: It probably is. Mr Lingard, does that look like the kind of document that was referred to in some of the bargaining meetings?---Yes.

PN169

Take a look at it and just tell me - you may or may not remember it specifically, but do you remember it?---Yes, I remember it, yes.

PN170

The question I have for you is whether - - -

PN171

THE COMMISSIONER: Just one moment. Can I have a look at it and then Mr Buckley can have a look at it. All right, thanks. Mr Buckley can have a look at that and then questions asked.

*** TRENT ROBERT LINGARD

RXN MR WILLIAMS

PN172

MR WILLIAMS: Mr Lingard, I've just passed you that document because of the instruction I had about matters which were discussed at the meeting, but the question I have for you is not actually about the content of that document. You were asked a question by Mr Buckley as when you first saw the rates that the company was proposing for new employees, and you had the response that it was in the meetings in February within the access period. I'm just going to ask you to consider whether it's possible that in fact at the meeting on 17 January 2023 Mr Els did take the bargaining representatives through the proposed rates for new employees?---In January?

PN173

Yes. I'm just asking you whether it's possible that he did?---Yes.

PN174

It's possible?---Yes.

PN175

Does the document jog your memory at all as to whether or not Mr Els did take the bargaining representatives through the new proposed rates?---I'm not too sure on the date, sorry.

PN176

Maybe let's not worry too much about dates, but is it possible that at some time before the February meeting in one meeting or another Mr Els did take the bargaining representatives through the proposed new rates?---Yes.

PN177

It's possible. When you received the detailed proposal in February and the explanatory document, some of which the Commissioner showed you, I think you gave an answer that you did have a look at schedule 2?---Yes.

PN178

So you were conscious certainly at that point at what rates the company was proposing for new employees?---Yes.

PN179

Now, I don't know whether you did this, but assuming you could have if you wanted to, compare those rates with the 2018 rates if you wanted to?---Yes.

PN180

Do you know whether you did or not?---I did, yes.

PN181

You did?---Yes, we had a copy of both EBA reference, yes.

PN182

So you did your own assessment of what the new rates looked like compared to the old rate?---Yes.

PN183

Just for yourself or including the new employees?---Just what was on the piece of paper. I wasn't - yes.

PN184

So do you remember actually being conscious yourself irrespective of what Mr Els might have told that, that some of the rates were in fact going up and some were going down?---Yes.

*** TRENT ROBERT LINGARD

RXN MR WILLIAMS

PN185

You were conscious of that?---Yes.

PN186

Can I take you back to your statement, paragraph 13, and you say this at paragraph 13(a), and of course the Commissioner did take you to this:

PN187

Mr Els explained that to remain competitive for future work a lower cost structure was required.

PN188

Do you recall him saying that?---Yes.

PN189

Which meant that in the 2023 agreement ACC had reduced the rates for new employees to rates that were lower than the rates in the 2018 agreement.

PN190

?---Yes.

PN191

Did Mr Els specifically say the rates were reduced for all new employees?---I don't recall.

PN192

At the time when you cast your vote, and may I assume you cast your vote in favour of the agreement?---Yes.

PN193

Thank you. At the time you cast your vote did you have in your mind a good understanding of how the 2023 agreement rates were different to the 2018 rates?---Yes.

PN194

And may I take it that from your earlier answer that that includes that there was some variability in the effect on old rates versus new rates?---Yes.

PN195

And that some of them were in fact going to go up?---Yes.

PN196

Including for new employees?---Yes.

PN197

Thank you. Was it of concern to you that some of the rates were going up?---No.

*** TRENT ROBERT LINGARD

RXN MR WILLIAMS

PN198

So for example if it had turned out that, or if the Commissioner found for example that you had not been given a clear explanation of which rates went up and which rates went down, would your vote have changed if unexpectedly or against your understanding, or what you'd been told, against what you'd been told, some of the rates were actually going up, would that have changed your vote?---No.

PN199

Thank you. That's all I had, Commissioner.

PN200

THE COMMISSIONER: All right. Thank you. Mr Lingard, you said you were given a document with 2018 rates?---No, it was a copy of the EBA.

PN201

Of the 2018?---Yes.

PN202

Sorry, a copy of the EBA?---EBA, yes.

PN203

And what did you do?---Pardon?

PN204

You got a copy of the 2018 EBA?---Yes.

PN205

And what did you do?---We went through what's different between 2018 and 2023.

PN206

Who did?---All of us, all seven full-time employees.

PN207

You were all there, and what did you do and what did you say?---It was just going through the changes, like the rates, the allowances and all that stuff, yes.

PN208

So what do you recall of the 2018 agreement?---I can't remember off the top of my head, sorry.

PN209

You were just asked now whether or not you compared the rates. Did you do that?---Yes, back - a couple of months ago, yes.

PN210

When?---February when we got them. Yes.

PN211

When you were given a copy of the 2018 agreement?---Yes. We went through the changes.

*** TRENT ROBERT LINGARD

RXN MR WILLIAMS

PN212

Right. Why did you look at the 2018 rates?---Just to compare to find out what's different. We just went through the documents.

PN213

We?---Me, sorry. I just had a quick look through.

PN214

You had a quick look through. Did you pull up the rates in the 2018 agreement, did you go to that page?---No.

PN215

So you couldn't have compared the 2018 rates and the 2023 proposed rates?---Sorry, yes, I did, but I can't just - I can't remember the actual rates off the top of my head.

PN216

Did you go to that page within the 2018 agreement, did you?---Yes.

PN217

In the presence of others?---No.

PN218

When did you do that?---At home.

PN219

Did you take the physical copy of the 2018 agreement with you home?---We have a copy, yes.

PN220

You have a copy how?---It was given to us.

PN221

When?---In one of the meetings.

PN222

And you took it home?---Yes.

PN223

Was there just one copy?---Pardon?

PN224

Was there just one copy of the 2018 agreement?---No, we all got copies.

PN225

So you were given a copy of the 2018 agreement to take home?---Yes.

PN226

And at home did you then compare the rates, did you?---Yes.

*** TRENT ROBERT LINGARD

RXN MR WILLIAMS

PN227

Is that after 2 February or 6 February?---I don't recall what date, sorry.

PN228

So your evidence is that you were given a copy to take home?---Yes.

PN229

And others were given a copy to take home?---Yes.

PN230

And in your time you checked - please look at me - you looked at the 2018 rates and then you looked at the proposed 2023 rates?---Yes.

PN231

And your evidence is that you saw some went up, some went down?---Yes.

PN232

Did you ask why that was the case, because you'd been told earlier that the rates were going to go down?---Yes, I understood that we had to try and get new business.

PN233

It had been explained to you in December and February that the rates needed to go down to get new business?---Yes.

PN234

And what did you think when you saw that some of the rates were going up?---I didn't take much notice of that, what rates that you're talking about. I know from our 3.5 and 3.33 we're on the same rate.

PN235

Did you look at for example the forklift driver going from \$30 down to \$24.50?---No.

PN236

Is this the first time today you've seen that?---No.

PN237

When was the first time you noticed that?---You mean on this - this one?

PN238

The 2018 agreement says that the last rate of pay is \$30?---Yes.

PN239

When did you know that under the 2023 agreement it wouldn't be \$30?---From the start they made it pretty clear they had to negotiate lower pay rates.

PN240

Some aren't lower?---No.

*** TRENT ROBERT LINGARD

RXN MR WILLIAMS

PN241

Anything arising there, Mr Buckley?

PN242

MR BUCKLEY: No, Commissioner.

PN243

THE COMMISSIONER: Mr Williams?

PN244

MR WILLIAMS: Not from me, thank you, Commissioner.

PN245

THE COMMISSIONER: Thank you, Mr Lingard. I don't know if you're going to stay here or if you're going to go outside. If you're going to stay here that's fine. If you go outside you're not to discuss your evidence with anybody else. Do you understand?---Yes.

PN246

Mr Williams will let you go when you can, when the matter is over, but right now while this hearing is on you can't discuss your evidence. Do you give the undertaking?---Pardon?

PN247

Do you give that undertaking to the Commission?---Yes.

PN248

Very good. Thank you, you're excused. Just leave everything there and my associate can determine what needs to stay and what goes. Thank you.

<THE WITNESS WITHDREW

[11.14 AM]

PN249

MR WILLIAMS: Thanks, Commissioner, I call Christopher McLeod.

PN250

THE COMMISSIONER: Yes.

PN251

THE ASSOCIATE: Could you please state your full name and address.

PN252

MR MCLEOD: Christopher (indistinct) McLeod, (address supplied)

<CHRISTOPHER MCLEOD, AFFIRMED [11.15 AM]

EXAMINATION-IN-CHIEF BY MR WILLIAMS [11.15 AM]

PN253

MR WILLIAMS: Mr McLeod, your full name is Christopher McLeod?---Yes.

*** CHRISTOPHER MCLEOD

XN MR WILLIAMS

PN254

And you're employed by Australian Country Choice as a forklift operator?---Yes.

PN255

At its Cannon Hill facility?---Yes.

PN256

And the work that you do is associated with the manufacturing operation?---Yes.

PN257

And you've been employed there for about five years?---Yes.

PN258

Mr McLeod, have you made a statement in relation to these proceedings?---Yes.

PN259

Do you have a copy of that statement with you?---Yes.

PN260

Can I direct your attention to clause 11 - paragraph 11, sorry. And in that you record that Mr Els told you this at 11 sub-paragraph (a):

PN261

To remain competitive for future work ACC needed to put in place a cost structure and pay rates for new employees under the 2023 agreement that were lower than the pay rates in the 2018 agreement.

PN262

Do you see that?---Yes.

PN263

Did Mr Els say that for new employees the pay rates would be lower in all cases; did he specifically say that, for all classifications, or did he just say - - -

PN264

THE COMMISSIONER: Just let him answer that question. Let's not have any leading questions, thank you.

PN265

THE WITNESS: Can you say it again, sorry.

PN266

MR WILLIAMS: Yes. You recorded that Mr Els said that the ACC needs to put in place a cost structure and pay rates that were lower than the pay rates of the 2018 agreement. What I'm asking you is whether or not Mr Els said that rates would go down for all new employees, or was it a more general statement?---It was just a general statement.

PN267

Thank you. Mr McLeod, to the best of your knowledge are the matters and facts set out in that statement true?---Yes.

*** CHRISTOPHER MCLEOD

XN MR WILLIAMS

PN268

Thank you. I tender Mr McLeod's statement.

PN269

THE COMMISSIONER: Any objection?

PN270

MR BUCKLEY: No objection, Commissioner.

PN271

THE COMMISSIONER: Mr McLeod's witness statement will be included in the evidence. You will be asked questions now in cross-examination.

CROSS-EXAMINATION BY MR BUCKLEY

[11.18 AM]

PN272

MR BUCKLEY: Mr McLeod, in your witness statement - do you have it there in front of you?---Yes.

PN273

Could you take a look at paragraph 6 for me, please. In that paragraph you talk about a meeting that you had with Mr Els and Ms Auvaa where the two of them talk to you about what sort of things they want to include in a new enterprise agreement; is that right?---Yes.

PN274

As I understand it there were seven employees of ACC who currently work in that section; that's right?---(No audible reply.)

PN275

And all seven were actually at that meeting?---Yes.

PN276

Okay. At that meeting when Ms Auvaa is talking to you and giving a presentation about the new agreement they made it clear to the employees, including you, that in order to be competitive they wanted the rates of pay for new employees to be lower in the 2023 agreement; is that right?---(No audible reply.)

PN277

THE COMMISSIONER: You need to give an oral answer.

PN278

MR BUCKLEY: Yes. The evidence is being recorded so you need to actually answer, not just nod your head?---Okay, sorry. Yes.

PN279

All right. It was made clear to you at that meeting though that the people who are currently employed by ACC under that agreement your rates of pay wouldn't go down; isn't that right?---Yes.

*** CHRISTOPHER MCLEOD

XXN MR BUCKLEY

PN280

And you were told that you would keep your existing rate of pay and get a wage increase when the new enterprise agreement was made?---Yes.

PN281

So that meeting was - you've written that down as being on 14 December. But if you go to paragraph 9 of your statement, which I think is on the next page, you talk about a meeting that occurred on 2 February 2023?---Yes.

PN282

And then later down another meeting that happens a few days later on 6 February 2023?---Yes.

PN283

And they're the meetings at which Mr Els goes through the new 2023 enterprise agreement and explains what's in that agreement, doesn't he?---Yes.

PN284

Between that first meeting on 14 December and these meetings in early February there were some other bargaining meetings, weren't there, at which the enterprise agreement was discussed?---Yes.

PN285

You were a bargaining representative for the agreement; that's right?---Yes.

PN286

Can you tell me how many of these bargaining meetings were there between the first meeting in December and the last meetings in February?---I'm not too sure on a number, but I know there was a couple.

PN287

All right. Sorry, let me just take you back to that meeting in December with Ms Auvaava and Mr Els. At that meeting they tell you they wanted lower rates of pay for new employees; is that right?---Yes.

PN288

At that stage though they didn't tell you what the company wanted those new rates of pay to be, did they?---No.

PN289

And they said that that was something they would discuss during the bargaining meetings; is that right?---Yes, we didn't discuss it.

PN290

All right. Now, can you remember when it was that the company told you what rates of pay it wanted for new employees, what the rates of pay would be?---No, I can't tell you what date, but I know we did get told.

*** CHRISTOPHER MCLEOD

XXN MR BUCKLEY

PN291

If you look at your statement, if you look at paragraph 9 of your statement, you say that Mr Els emailed you some documents. Okay?---Yes.

PN292

Which explained what the changes were between the 2018 agreement and the 2023 agreement?---Yes.

PN293

Would that have been the first time that you saw the new rates of pay for the new employees when you looked through those documents?---I can't remember.

PN294

All right. Let me ask it this way. So on 2 February you get these documents emailed to you. Okay?---Yes.

PN295

And it looks like on the same day you actually have a meeting with Mr Els. Okay?

PN296

THE COMMISSIONER: Is that right?---I didn't write down what dates we had meetings. We have multiple meetings and - - -

PN297

MR BUCKLEY: All right. In your statement you talk about a meeting on 2 February and one a few days later on 6 February?---Yes.

PN298

And they're the meetings where Mr Els go through this explanation of the new agreement and how it's different from the 2018 agreement?---Yes.

PN299

Do you remember those meetings?---Yes.

PN300

Was that the first time you learn what the rates of pay for new employees would be?---Yes, I'm still not sure. We had multiple meetings and I'm just not sure what date we got to see what - - -

PN301

Okay. Let me ask it this way. Is it the case that you didn't really care what the new rates of pay would be for new employees, because you'd been told that you and the other six existing employees were definitely getting a pay rise?---No, that's not the case.

PN302

So it mattered to you that the new employees would be getting a lower rate of pay than the rates in the 2018 agreement; is that right?---It bothered me because they're going to come in with no skill, like, you know - but I understood having a lower rate is not having the experience there.

*** CHRISTOPHER MCLEOD

XXN MR BUCKLEY

PN303

And the company had told you that they needed to be competitive?---Correct.

PN304

To get new work; isn't that right?---Yes.

PN305

And they had told you that the jobs of you and the other six employees might be at risk if they couldn't get new work?---Yes.

PN306

So the company told you that they were going to lower the pay rates for new employees under the 2023 agreement?---Yes.

PN307

Do you know if they actually did that in the agreement, lower the pay rates for new employees?---I'm pretty sure it was in the new agreement when I read it.

PN308

When you say you read it what did you read; are you talking about the agreement or are you talking about the explanatory document that you were given, or something else?---The agreement.

PN309

So when you have these meetings and Mr Els is taking you through the enterprise agreement was it your understanding that the company was going to lower the pay rates for all new employees?---Yes.

PN310

Do you know if the pay rates for all new employees was reduced in the 2023 agreement?---What do you mean, sorry?

PN311

You have given evidence then that you were told that the pay rates were going to do down for all new employees?---Yes.

PN312

Did that happen in the 2023 agreement? Does the 2023 agreement reduce the pay rates for all new employees?---Yes.

PN313

Yes, thank you, Commissioner, that's all I have.

PN314

THE COMMISSIONER: All right. Anything in re-examination?

PN315

MR WILLIAMS: Yes.

RE-EXAMINATION BY MR WILLIAMS

[11.31 AM]

CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN316

Mr McLeod, you were asked a question as to when you first became aware of what the company had in mind in relation to the proposed new rates, and you weren't sure when you first became aware of that?---Yes.

PN317

But you were sure that you were aware of what the proposed new rates were before you voted?---A hundred per cent we knew what the rates were before we voted.

PN318

Is it possible that you were told during one of the several bargaining meetings that you had with Mr Els before the 4 February?---Yes, we were definitely told before February that what our rates were.

PN319

And what about what the new rates would be for other employees, what the schedule of rates would be?---Yes, we got shown a table.

PN320

You can't recall exactly what meeting that was?---No. We had multiple meetings and I wasn't taking - we got emails sent after every meeting so I didn't take notes.

PN321

Thank you. Mr McLeod, turning to paragraph 11 your evidence I think in response to my question was that what Mr Els said to you in sub-paragraph (a) was more of a general statement. Did he tell you specifically that all new rates

would be going down or was it more general?---Sorry, can you repeat that question again.

PN322

Yes. I think I asked the question. I think when I first spoke to you you said that it was more of a general statement, but in response to a question by Mr Buckley it appeared that your impression was that all the rates might be going down.

PN323

THE COMMISSIONER: You answered that you were told that all the rates were going down.

PN324

MR WILLIAMS: It was certainly his understanding.

PN325

THE WITNESS: Yes, I think I was just understanding that the rates were going to go down.

PN326

THE COMMISSIONER: You're being asked something different here, so please listen.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN327

MR WILLIAMS: It's the same question. Your evidence is that what Mr Els told you, recorded in sub-paragraph (a), was more of a general statement that pay rates for new employees would be lower; correct?---Yes.

PN328

But can you recall him saying specifically all classifications would be lower?---No, I don't recall hearing that.

PN329

But you did in your own mind from the explanation you received, as I understand it you did get the impression that rates would be going down across the board?---Yes.

PN330

May I take it, Mr McLeod, that you voted in favour of the agreement?---Yes.

PN331

Contrary to the understanding you had if you had actually understood that in fact while some rates would be going down for new employees some rates would be going up for new employees, if you had actually understood that to be the case would that have changed the way you voted?---No.

PN332

And leaving aside what you said before about being bothered by rates going down, which of course we all understand, would it have made any difference to your own situation?---No.

PN333

Thank you, Commissioner.

PN334

THE COMMISSIONER: We have seven employees covered, seven casting a vote and seven voting.

PN335

MR WILLIAMS: Still got (indistinct), Commissioner.

PN336

THE COMMISSIONER: All right. Mr McLeod, if you can go to your statement at paragraph 7(d). So this is back to the meeting in December?---Yes.

PN337

And Ms Auvaa explained a number of things to you and she said that for new employees the company would negotiate lower more competitive pay rates. Is that what she said?---Yes.

PN338

And what was your understanding of who that would be negotiated with?---What do you mean, sorry, like with the negotiation?

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN339

She's presenting to you in December - - -?---Yes.

PN340

- - - alongside Mr Els. They're saying we need to do things better because of loss of contracts?---Yes.

PN341

We're going to negotiate and for new employees the company would negotiate lower more competitive pay rates?---Yes.

PN342

Who did you think they would negotiate the rates with?---Like what companies or people or - - -

PN343

She says what they want to do?---Yes.

PN344

What do you think the company will do? How do they negotiate new pay rates for new people; what's your understanding back in December?---My understanding is that they will outdo the competitors, like the competition. That way if we have the better pay rates we're going to get the new workers.

PN345

He's already told you at 7(b) they have already conducted market research?---Yes.

PN346

And at 7(c) she has said that your rates will be preserved?---Yes.

PN347

And you'd get increases on your current rates?---Yes.

PN348

That's relevant to you and the other six employees?---Yes.

PN349

And then your statement says that she said:

PN350

For new employees the company would negotiate lower more competitive pay rates, and that would allow the company to lower the cost structure for further processing so it can be in a better position to try and win new business.

PN351

?---Yes.

PN352

It's your statement?---Yes.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN353

What did you understand that to mean?---That we'll just have lower pay rates for the new starters. That way we can win more like customers, contracts, stuff like that.

PN354

Who would the company negotiate that with?---The new employees, the EBA.

PN355

They would negotiate that with the new employees?---Or, you know, when you - you know how sometimes when you go for a job they offer this and you can go like, no, it's not enough and then you get a little bit extra or what not, you know what I mean.

PN356

So you get either an over award or an over agreement payment?---Yes.

PN357

So if the award says \$22 an hour and you don't want to work for \$22 an hour you can say, well I don't want to work for \$22 an hour. Is that what you mean?---Yes. Like a lot of - like, you know, when I go for job interviews I see what they're paying and then my experience and then, you know, how it justifies over that.

PN358

So you ask for more?---Yes.

PN359

Then what the relevant industrial instrument says?---Yes.

PN360

Whether it's an award or an agreement. You would expect the company to know what they have to legally pay you?---Yes, off the award rate.

PN361

But you're saying when - yes, off the award or the agreement rate?---Yes.

PN362

You're saying when you want to apply for a job you might tell them that you want more than that?---No, sorry, I misunderstood your question. Yes.

PN363

I am just rephrasing what you said. You're quite entitled to say 'I want more.' Your evidence here is that the company said they would negotiate lower more competitive pay rates, and I'm asking you what you understood that to mean. Who would they negotiate with?---I'm not sure how to respond. Like it's in my head, but I don't know how to put the words to bring it out.

PN364

Did you know that it was going to be you and the other six employees who would set the destiny for future employees' rates?---Yes.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN365

You did? So in December - - -?---Yes.

PN366

- - - when they're saying we need to cut rates did you know that it was you and your fellow six employees who would determine what those rates would be?---Like a dollar figure or - - -

PN367

You will be asked to vote on it. Did you know that?---Yes, we understood, or I understood that we were voting for a lower rate for the new starters what come in the future.

PN368

When did you understand that?---It was through one of the meetings we had before we voted.

PN369

Was that in 2023?---I believe so.

PN370

You don't know when you were first shown the rates that the company was proposing and asking you to vote on for new employee rates?---No, I don't - - -

PN371

You don't recall?---I remember seeing the new rates, getting shown the rates and explain the rates, but I don't know the date.

PN372

You were shown the rates. Do you think you were shown the rates in a meeting?---It was on like a slide show, so we were getting shown what our rates would be, what new rates would be.

PN373

There is currently no evidence before the Commission on that. You said that you were emailed things after each meeting?---Well, emailed - after every meeting we were emailed, unless I was looking at something different or whether I misunderstood.

PN374

You say at paragraph 9 that you were emailed a document pack?---Yes.

PN375

And it included among other things an explanatory document which summarised the changes between the terms of the 2018 agreement and the terms of the 2023 agreement?---Yes.

PN376

Do you recall what that it?---Yes, that was the old - the old agreement and the new agreement and what was different and both of them.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN377

And you were also provided a PowerPoint presentation?---Yes.

PN378

Do you recall anything else that you were provided with on that day? I mean I will call for a copy of that email?---Yes.

PN379

Is that in any of the material? Is that at page 40?

PN380

MR WILLIAMS: Commissioner, the email is at page 40, but I don't think Mr McLeod has that document.

PN381

THE COMMISSIONER: No.

PN382

THE WITNESS: No.

PN383

THE COMMISSIONER: I was asking you. Ms Hamberger was being helpful in saying that she thinks it's there. So this is 40, is it? Can I get a copy of the court

book, please. All right, you've got it. Mr McLeod, on the bottom of each page in red there's some numbers?---Yes.

PN384

If you can go to page 40, thanks?---I'm on page 40.

PN385

Okay. Do you recall getting this email?---Yes.

PN386

And that's you, that's your email address, Christopher, et cetera?---Yes.

PN387

This is the document pack that you refer to in your witness statement; is that right?---Yes.

PN388

Do you think in any of those documents you got to see the rates other than in the 2023 agreement; did you go to the 2023 agreement and have a look at what the rates are?---Yes, I'm pretty sure I looked at the rates.

PN389

How did you look at the rates?---Pardon me, sorry?

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN390

How, by what method did you look at the rates?---I'm pretty sure it was in this email. I remember looking at something. It might not have been it, I'm not too sure.

PN391

Is that the first time you think you saw the 2023 rates?---Yes.

PN392

So do you think you opened up this email, opened up that attachment, went to schedule 2 and had a look at the rates?---I'm pretty sure we got shown in one of the meetings the PowerPoint and we went through it all.

PN393

All right. So when you got this on 2 February did you go and open up the agreement?---Yes, I know I did open up the agreement and have a quick look at it.

PN394

You had a quick look?---Yes, because reading and writing is not my strongest point, so I had to get my partner just to bring it back down and say - because I look at it and I get confused, I'm like what does this actually mean.

PN395

So just keeping that open with one hand you were provided with the summary at page 44?---Yes.

PN396

Do you recall seeing that? That's a quite lengthy - - -?---Yes, I recall seeing that.

PN397

You recall seeing that. And that explained the 2023 agreement to you, didn't it?---Yes.

PN398

As compared to the 2018 agreement?---Yes.

PN399

It didn't contain the 2018 rates, did it?---I don't think so.

PN400

No. Did you have a look at the 2018 rates?---I don't think so.

PN401

So you didn't open up the 2018 enterprise agreement and go to the back and have a look at the rates?---I'm pretty sure I did, because when I was looking through both agreements I was cross referencing, like working out what was different from this one to the old one.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN402

You went into the agreement, did you? Why would you do that when you've got this Excel spreadsheet to assist you?---Because it was too hard on my phone, so I printed it out so I could look at it.

PN403

What did you print out?---The attachment. I think it was this thing, page 41 - 44, sorry.

PN404

You printed that out?---Yes.

PN405

Did you print anything else out?---I'm not too sure, I can't really remember.

PN406

You said that reading and writing is not your strong point?---Yes.

PN407

Are you literate, can you read?---Yes, I can read, it's just some of the things I get confused and my questions and stuff like that.

PN408

How much assistance do you require?---I don't get assistance. It's just something I've dealt with my life and I just - anything I'm not sure I ask my partner just to bring it back down to my level.

PN409

Does your employer know this?

PN410

MR WILLIAMS: With respect, Commissioner, this is an inappropriate line (indistinct). The witness should not be required to come to this Commission and be examined by anybody in relation to his capacity to read and write.

PN411

THE COMMISSIONER: It's one of the considerations in the Act.

PN412

MR WILLIAMS: Commissioner, I note what you're referring to, but there's no proper basis for (indistinct) here that the employer's explanation is not appropriate having regard to whatever vulnerabilities - - -

PN413

THE COMMISSIONER: Mr Williams, I'm just discovering that this witness has a declared issue with reading.

PN414

MR WILLIAMS: That's not what he said at all, Commissioner.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN415

THE COMMISSIONER: Well, it is what he said, Mr Williams. He said that he has an issue - - -

PN416

MR WILLIAMS: He said reading and writing is not his strong point. It doesn't mean - - -

PN417

THE COMMISSIONER: Yes, and I'm going into that. It's the first time I've learned of it, and it forms a consideration under the Act whether or not the employer knew and has appropriately provided the information to employees. I couldn't have known otherwise.

PN418

MR WILLIAMS: Commissioner, the evidence before you doesn't suggest that this witness has a vulnerability. It just suggests what he's told you, which is reading and writing is not his strong suit.

PN419

THE COMMISSIONER: I wouldn't know unless I ask the questions, Mr Williams. Thank you, your point is noted.

PN420

MR WILLIAMS: Thank you.

PN421

THE COMMISSIONER: Yes, Mr McLeod. So you can read things. You need some assistance, do you, with some things?---Yes.

PN422

Did you read this summary of the 2018 versus the 2023 agreement; you said you printed it out?---Yes, I'm pretty sure I did read it, because I went through it and there was a couple of little things I wasn't sure, but my partner explained to me and I'm like that makes sense.

PN423

All right. When you looked at the 2018 agreement what did you do; were you given a copy of that, a hard copy?---I'm pretty sure we did get given a hard copy of it.

PN424

Might that have been in one of the meetings in February?---Yes, it would have been in one of the meetings. I'm not sure on the dates.

PN425

And what did you do with that?---Just looked what was different between the agreement to this new agreement, the one we were voting against.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN426

And you're a forklift driver, did you look at what the rates would be for a forklift driver under the 2018 agreement?---I don't think I did. I'm not - I can't remember what rates I was looking at and stuff.

PN427

You're paid more than \$30 or at least \$30 an hour, aren't you?---Correct.

PN428

Did you have a look at what a forklift driver might get under the 2023 agreement?---No, I don't think I did, because I was happy with the wage I got at the moment.

PN429

Did you know that under the 2018 agreement a forklift driver will get \$30 at least?---I'd say I did know.

PN430

How do you know?---Just through conversation outside of work. Like a lot of my mates are forklift drivers.

PN431

Sorry, I mean under the 2018 agreement?---Okay, sorry, my bad.

PN432

That's okay. Because you're the only forklift driver in this area, aren't you?---Yes.

PN433

There's only you?---Yes.

PN434

And you get whatever rate you get. I don't need to know what that is?---Yes.

PN435

Did you know that the 2018 agreement provided for \$30 an hour?---I'm not sure.

PN436

And you said you didn't look at the 2023 rates for a forklift driver?---I remember I had a look at the rates, but I was happy with what I got and I was like, yes, that's good.

PN437

But just earlier now I asked you and you said you didn't look at the rates for a forklift driver. So did you or didn't you?---I'm pretty sure - is that with this agreement?

PN438

The new agreement?---Yes, I did look at the rate for this agreement.

PN439

For a forklift driver?---Yes, for a forklift driver.

CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN440

What do you roughly think the rate is for a forklift driver if the agreement is approved?---Thirty-two.

PN441

Thirty-two?---Yes.

PN442

For a forklift driver. Is that for you?---Is that - are you asking for my rate or the new starters?

PN443

No, the new starter rate?---Sorry, I misunderstood your question. For the new starters I'd say between probably 29, 28, in between there.

PN444

You don't know, you're just guessing?---Yes, I'm not sure. I can't remember like the rates.

PN445

The rates for a Level 2 under the proposed 2023 agreement which equates to the old classification of forklift driver is \$24.50, down from \$30 from the last agreement. Did you not know that?---I'm sure I would have noted. I just - yes.

PN446

You're sure you would have known that?---I would have been told at one point, and then with all this - yes.

PN447

You thought a few minutes ago from memory it could have been something like \$28, \$29, but when I tell you it's \$24.50 you think you were told that or you did see that?

PN448

MR WILLIAMS: Commissioner, the witness should be asked questions in a fair way. The range is \$24.50 to \$30.

PN449

THE COMMISSIONER: Yes. As low as \$24.50.

PN450

MR WILLIAMS: The witness may be getting the impression that you think he's giving inaccurate evidence. He has not.

PN451

THE COMMISSIONER: All right. Thank you. Mr McLeod, the rates within the proposed agreement provide for as little as \$24.50 up to \$30.47 for the first pay period?---Yes.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN452

When the agreement comes into operation?---Yes.

PN453

So a new starter could be paid as little as \$24.50. Were you told that, did you know that?---Yes.

PN454

You did. How, how did you know that?---No, sorry, we weren't told that.

PN455

It was in the agreement that you were provided a copy with?---Yes.

PN456

Did you look at it?---Yes, I did look at it.

PN457

Did you read it?---Yes, I did read it.

PN458

Did you understand that somebody could get paid as little as \$24.50?---Yes, I understood that.

PN459

Did you understand that other people might get a 10 per cent pay increase if they came on as a new employee compared to the 2018 rates?---Sorry, can you say that again.

PN460

All right. So a Level B employee under the 2018 agreement, so at the current rate, and under a Level 3, logistics and warehouse role, their bottom rate could jump from \$23.59 to the bottom rate of \$26, which represents a 10.22 per cent increase. You were told that the business needed to reduce rates, but in fact that rate would go up by more than 10 per cent. Were you told that?---I don't think so.

PN461

All right. So only a handful of the rates in fact went down from the 2018 rates. So the 2023 rates that you saw attached to the back of the 2023 agreement that you're being asked to vote on, only two of those had a minimum rate that was lower than the 2018 agreement. Did you understand that, the rest had increases of various amounts?---Yes, I understood that.

PN462

You understood that. How did you understand it?---By looking at the tables. I'm pretty sure it was in somewhere that they had the pay table. It was an A, B, C or something.

PN463

Yes, there's A, B, C rates?---Yes.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN464

I haven't been provided with a table. Do you think you were provided with a table with variances between the 2018 rates and the 2023 rates, do you?---It might be just the 23 rate we got shown. Maybe I'm getting confused.

PN465

Which showed 3 and a half per cent and then 3 per cent, 3 per cent, 3 per cent.

PN466

MR WILLIAMS: There's a schedule as well, Commissioner.

PN467

THE COMMISSIONER: Sorry?

PN468

MR WILLIAMS: There is a schedule in the new enterprise agreement as well which contains (indistinct).

PN469

THE COMMISSIONER: Yes, the schedule 2.

PN470

MR WILLIAMS: Schedule 2.

PN471

THE COMMISSIONER: Yes, but that's different to what the witness is saying with the 2018 versus 2023.

PN472

MR WILLIAMS: The witness was suggesting that he had seen the rates and he had seen a table of them, and I thought that you were drawing his attention to clause 11 of the agreement, which is where the - - -

PN473

THE COMMISSIONER: No, I was talking about the schedule, the 3 and a half, the very black - if the agreement is approved you will need to get a cleaner copy of that schedule 2 because it's not very pretty.

PN474

MR WILLIAMS: Commissioner, I have the same concern.

PN475

THE COMMISSIONER: Yes. So you think that's it where you got shown one column 3 and a half per cent, 3 per cent, 3 per cent, 3 per cent?---Yes.

PN476

Okay. But you don't think you were shown 2018 rates versus 2023 rates in a table?---I'm not too sure of the - I could be getting mixed up with that 23, that table we were just talking about, because I looked backwards and forwards at it so much.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN477

Well, we will have a look at that. Yes. So let's have a look at that, that's at page 98 of the court book. It's a bit hard to read. Does that look like - - -?---Yes, this is the table I was talking about, the A, B, C.

PN478

Yes. On commencement is the 3 and a half per cent, and then the next three columns are 3 per cent on anniversaries?---Yes.

PN479

It's a bit hard to read?---Yes.

PN480

All right. So if I were to show you this document - now, this is an Excel spreadsheet that I put together, and I'm not sure how familiar you are with Excel spreadsheets?---I do that every day. I load the Excel spreadsheets and - yes.

PN481

Great. You can't see the columns, but on the left-hand side 2018 agreement. This is the current agreement that applies at your workplace. There's Level A, B, C and a forklift, and you're the forklift driver, right?---Yes.

PN482

Getting paid, and this is where the rates ended up in about 2021 under the current agreement. And there's only seven of you there, I understand that?---Yes.

PN483

And I'm told that some employees are Level A, some employees are Level B, and you're a forklift driver?---Yes.

PN484

Under the proposed agreement some employees would be Level A and B, food manufacturing, and there would be Level 3 and 4 I think with logistics. That's at Mr Els's at 351. You're employee 6. You were a forklift driver under the 2000(sic) agreement, or you still are. You'd be a Level 3 under this agreement, but of course your existing rate of pay is protected?---Yes.

PN485

Where this says \$26 to \$32.89 it doesn't matter what that says because your pay rate is protected. Do you understand that?---Yes, I understand that.

PN486

Great. Okay. But somebody else coming in, I don't know why or if they're Level 3, they previously were guaranteed a minimum of \$23.59 in that first column, and then they would be guaranteed a minimum of \$26 which represents a 10.22 per cent increase. Do you see that? So the difference there is \$26?---Yes.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN487

As opposed to \$23.59 in the current 2018 agreement on the far left-hand side, and that represents a 10.22 per cent increase. So you wouldn't have known that, would you, that that same classification for a new employee is going to be paid more than 10 per cent more under the 2023 agreement than the 2018 agreement?---No.

PN488

And you wouldn't have known that a Level 4 would have been paid more than 5 per cent as the base compared to the 2018 agreement, because you weren't told this, were you?---Yes. No.

PN489

Moving over to the food manufacturing, the Level B, so it's close, right close to there, the old Level B, the base there is \$23.59. The base minimum promised under the 2023 agreement is \$25.50. That represents an 8.1 per cent increase. You weren't told that either?---No.

PN490

But you were told that the business wanted to reduce rates for new employees, weren't you?---Yes. Yes, we were told that.

PN491

That doesn't quite add up, does it?

PN492

MR WILLIAMS: That's a submission, Commissioner, with respect.

PN493

THE COMMISSIONER: I will ask the witness. Do you accept that if you're being told that new employees need to be paid less to make this competitive then 8 per cent, 10 per cent, 5 per cent more doesn't mean that they're getting paid less than the 2018 agreement?---(Indistinct), sorry. Like I understand that the new employees were going to get paid less.

PN494

That's what you were told?---Yes, and I understood that.

PN495

This document doesn't bear that out, does it, for some?---Yes.

PN496

Would you have liked to have known that?---Yes, but I don't think it would have changed my vote, what I voted.

PN497

You're told one thing, that we need to reduce rates to make this place competitive, and is today the first time you're learning that the pay rate is greater than the 2018 agreement in the 2023 agreement?---What do you mean, sorry, like - - -

PN498

Had you known before today that some of the rates are greater in the 2023 agreement than the 2018 agreement?---I'm not sure, sorry.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN499

All right. I will just see if there's anything else within your statement I need to cover. So at 13, this is back on page 140?---Yes.

PN500

So at paragraph 13 you said:

PN501

I also agreed with the proposal to lower the rates for new employees under the 2023 agreement, but not lower the rates for the current employees.

PN502

Do you stand by that statement?---Yes.

PN503

But now that you know that a large portion of the rates are not lower do you say that that's still correct?---Yes.

PN504

How can it be correct?---I thought you meant like does my voting, like is it still - -

-

PN505

No, I'm not asking about your vote. Your statement, it says:

PN506

I also agreed with the proposal to lower the rates for new employees.

PN507

If that's not factually what happened, if the rates are not lower in all respects for all classifications, how could you have agreed to that then?

PN508

MR WILLIAMS: Commissioner, with respect, you're loading two concepts together. One is that rates are going to go down. The other one is that all rates are going to go down. They're not the same thing. And that's been explored in evidence with this witness and also the previous evidence.

PN509

THE COMMISSIONER: This is the witness's statement. This is Mr McLeod's statement. 'I also agreed with the proposal.' I'm putting this to you, Mr McLeod?---Yes.

PN510

MR WILLIAMS: You suggested to him that his statement is that rates were to go down. It's incorrect, it's not, rates didn't go down.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN511

THE COMMISSIONER: Yes, and I have asked in all respects. These are his words, I'm asking him to clarify his words and whether he still stands by his statement.

PN512

MR WILLIAMS: What's the purpose of the question, Commissioner, where relevance needs the exercise of your approval - how does it assist you?

PN513

THE COMMISSIONER: This is his evidence. He has sworn that it's true and correct. We have gone through a few things today where he may change his mind about whether this statement is correct or not.

PN514

MR WILLIAMS: We brought Mr McLeod and Mr Lingard to the Commission. They are process workers at my client's establishment. They have been subjected this morning - they came here to be helpful and they wanted to be helpful. They have been subjected to what, with respect, has been a hostile examination of their (indistinct), it seems to be, to find inconsistencies or uncertainties or whatever else. There's no purpose in doing that related to the exercise of your discretion, and in this particular case - - -

PN515

THE COMMISSIONER: Mr Williams, you know that One Key obliges me, it puts a statutory obligation on me to satisfy myself. That is what I will do, and I told you I would do that. I have been very gentle with these witnesses because I imagine it's their very first time in the Commission.

PN516

MR WILLIAMS: Absolutely, yes.

PN517

THE COMMISSIONER: I have not been overly legalistic with them as I would with other more sophisticated witnesses. I hope you understand that the tone that I have used with each of the witnesses has been in that fashion.

PN518

MR WILLIAMS: Commissioner, I say, with respect, that the tone has been derogatory of witnesses for whom this is a very unusual experience for them.

PN519

THE COMMISSIONER: I have been very gentle, Mr Williams. Maybe you haven't been in my courtroom long enough. I've been very gentle with these witnesses.

PN520

MR WILLIAMS: I have been in your courtroom many times, Commissioner, and
- - -

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN521

THE COMMISSIONER: And I understand the level of sophistication. I observe that immediately upon witnesses entering the witness box. Okay. So I have been gentle. I need to ask these questions, Mr Williams.

PN522

MR WILLIAMS: With respect, you don't. Mr McLeod - - -

PN523

THE COMMISSIONER: I disagree with you and I will continue. Thank you, Mr Williams. I have an obligation pursuant to One Key, and the member of the Commission was castigated in One Key for not asking those questions.

PN524

MR WILLIAMS: It's very different circumstances, Commissioner.

PN525

THE COMMISSIONER: Not really.

PN526

MR WILLIAMS: The question you just asked proceeded on the implied basis that Mr McLeod could not admit that you thought he was giving inconsistent evidence, and that is unfair. It's also untrue.

PN527

THE COMMISSIONER: I'm asking him. He hasn't answered it properly yet.

PN528

MR WILLIAMS: And I formally object to the line of questioning.

PN529

THE COMMISSIONER: I understand what you say, but I will direct your attention in One Key to - - -

PN530

MR WILLIAMS: I'm very familiar with One Key.

PN531

THE COMMISSIONER: Well, I will repeat what the learned judge has said at paragraph 120 that the information was easily ascertainable.

PN532

MR WILLIAMS: The criticism in One Key was the evidence which was plainly if not deceitful certainly very economical by the Human Resources manager; not by an employee who comes along to give helpful evidence to the Commission, to answer, and the answer what (indistinct) your concerns would be. This process is not appropriate and we (indistinct) finish.

CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN533

THE COMMISSIONER: Thank you, Mr Williams. I am almost finished. I have said that I'm getting through this last statement before I will hand it back over to you all. Thank you, Mr Williams. Mr McLeod, paragraph 13. After everything that you've answered here today, and in this statement that you earlier gave you said:

PN534

I also agreed with the proposal to lower the rates for new employees under the 2023 agreement.

PN535

But not lower your own rates. I understand that. And you gave reasons why. Reading that first line there where you say, 'I also agreed to lower the rates for new employees' - - -?---Yes.

PN536

- - - do you agree with what you've written there?---Yes, I agree with what I've written there, like the new employees are going to be on a lower rate. I agree with that.

PN537

But what if they're not all on the lower rate; did you have a misunderstanding?---No, I don't think it was a misunderstanding.

PN538

I am not suggesting through any fault of your own. I asked you earlier if you would have liked to have been told that some employees were getting a pay increase and I think you said 'Yes'?---Yes. I was just under the understanding like the new employees would be on a lower rate, which I was cool about, like, yes.

PN539

But now that you know that not all of them would receive lower rates in the 2018 agreement would that change what you understood at the time?---So what you're saying is that like not all new employees are going to, like, job rate, like - - -

PN540

That's right?---Yes. You see my understanding was that some like new employees would be on a lower rate, some would be like, you know, like - - -

PN541

Some would what?---Pardon me, sorry?

PN542

You finish the sentence. Some would be on a lower rate and some would what?---Be on like a higher rate.

PN543

And how do you know that?---How do I know that? I'm not sure how (indistinct) made that decision like that, you know. Everyone would - some would be on a lower rate and some might not be.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN544

All right. Anything arising, Mr Buckley?

PN545

MR BUCKLEY: No, thank you, Commissioner.

PN546

THE COMMISSIONER: All right, thank you. Mr Williams?

PN547

MR WILLIAMS: Not for me, thank you.

PN548

THE COMMISSIONER: Thank you. Thanks, Mr McLeod, for giving evidence. We have only got one more witness to go which is Mr Els of course. You're not allowed to speak to him, but you can speak to anyone else. Okay?---Yes, thank you.

PN549

Or take some instruction from the solicitors?---Yes.

PN550

Thank you very much for giving evidence?---Thanks.

<THE WITNESS WITHDREW

[12.16 PM]

PN551

THE COMMISSIONER: Parties, we will have a break. Do you wish to have lunch now?

PN552

MR WILLIAMS: It's been a bit of a long morning, Commissioner, we're happy to have a lunch break now and come back whenever you're ready.

PN553

THE COMMISSIONER: All right. We can come back at one. And what will be Mr Els be doing in that time, having a sandwich by himself?

PN554

MR WILLIAMS: I have got to think about that. I'm allowed to take an instruction from him - - -

PN555

THE COMMISSIONER: Of course.

PN556

MR WILLIAMS: - - - in relation to a matter which has arisen.

PN557

THE COMMISSIONER: Yes.

*** CHRISTOPHER MCLEOD

RXN MR WILLIAMS

PN558

MR WILLIAMS: Obviously I will do that carefully and - - -

PN559

THE COMMISSIONER: All right. You know what you need to do. I just always caution others who don't necessarily know what they need to do.

PN560

MR WILLIAMS: Quite so. He's not under cross-examination, so there's no particular rules, but of course I will be careful in the way that - as I always will be.

PN561

THE COMMISSIONER: Fabulous. Is 1 o'clock enough time, parties?

PN562

MR WILLIAMS: Yes.

PN563

THE COMMISSIONER: Yes. Thank you, we will adjourn until then.

LUNCHEON ADJOURNMENT

[12.16 PM]

RESUMED

[1.08 PM]

PN564

MR WILLIAMS: Thanks, Commissioner, I call Peet Els.

PN565

THE COMMISSIONER: Thank you. I still have this document.

PN566

MR WILLIAMS: Yes. Perhaps pass that back or - - -

PN567

THE COMMISSIONER: Do you want copies of it?

PN568

MR WILLIAMS: I'm not sure how much (indistinct) obtain, but I was going to show it to the witness, so perhaps - - -

PN569

THE ASSOCIATE: Please state your full name and address.

PN570

MR ELS: My surname is E-l-s, Echo, Lima, Sierra. First name is Petrus, P-e-t-r-u-s. Two other names, G-e-r-h-a-r-d-u-s, last name M-a-r-t-h-i-n-u-s, (address supplied.)

<PETRUS GERHARDUS MARTHINUS ELS, SWORN [1.10 PM]

EXAMINATION-IN-CHIEF BY MR WILLIAMS [1.10 PM]

PN571

Mr Els, the swearing matter of the process isn't always transcribed, so I'll ask you to state again for the record your full name, please?---I'll start with my surname again, E-l-s. My first name is Petrus, my second name is Gerhardus, my third name is Marthinus.

PN572

Do you think there's any need to ask Mr Els to spell them?

PN573

THE COMMISSIONER: No.

PN574

MR WILLIAMS: We will correct it if we need to.

PN575

THE COMMISSIONER: Yes.

PN576

MR WILLIAMS: Thank you.

PN577

Mr Els, you're employed by Australian Country Choices as the human resources manager for Cannon Hill?---Yes.

PN578

You have had that role since February 2022?---Yes.

PN579

In that role, you were responsible for aspects of the negotiation of the proposed agreement before the Commission today?---Yes.

PN580

Mr Els, have you made two statements in connection with these proceedings?---Yes.

PN581

A first statement and then a supplementary statement?---Yes.

PN582

Do you have copies of both of those statements with you?---Yes, I do.

PN583

Dealing first with the shorter statement, which is headed 'Supplementary Witness Statement of Peet Els', to the best of your knowledge and belief, are the matters that are in that statement true?---Yes.

*** PETRUS GERHARDUS MARTHINUS ELS

XN MR WILLIAMS

PN584

Mr Els, now going to your first witness statement, the longer witness statement, I understand there are some matters you wish to clarify. If we could do that briefly. Could you go to paragraph 53?---52, sorry?

PN585

53?---53.

PN586

We will come back to 52?---Yes, that's correct.

PN587

You say that in your meetings with the affected employees, none of them asked any questions about the differences between the pay rates they would receive and lower pay rates that would be received by any future employees. I paraphrase. Just to be clear, did they ask questions about other things?---They did.

PN588

What sort of volume of questions did you field?---For example, there was a question around the penalty rate for Saturdays, which in the previous agreement was 25 per cent, and they raised - there was a discussion brought up by them and, as a result of that, the rate was increased to 50 per cent.

PN589

Are there other examples as well? We don't need to go through all of them?---I can't specifically think of any, but I was just worried that that statement creates the impression that, you know, there was no participation from their side, which was not the case. They were full participative.

PN590

Mr Els, can I now ask you to go to paragraph 27?---Yes.

PN591

In that paragraph, and I'll paraphrase to an extent, you say that it became apparent from analysis that for some of your classifications, there was a difference in the rates in the 2018 and the rates offered by competitors, and you say mostly that, 'The ACC's rates were considerably higher than equivalent classifications in our competitors' enterprise agreements.' Just to assist the Commission, when you say 'competitors', are you able to give examples?---Yes, specifically our main competitors in that part of the business are Hilton Foods and Prima.

PN592

Do you compete with those employers or those operations in your production area?---No, not in the primary production area. In the further processing area, yes.

PN593

Presumably because they don't have primary meat processing plants?---Yes.

PN594

They compete with you in value added manufacturing?---Yes, that's correct.

*** PETRUS GERHARDUS MARTHINUS ELS

XN MR WILLIAMS

PN595

Can we now go to paragraph 52?---Yes.

PN596

In paragraph 52, you've recorded aspects of your explanation to the employees?---Yes.

PN597

This is in the access period that you mean?---Yes.

PN598

THE COMMISSIONER: Are you sure?

PN599

MR WILLIAMS: It says in 51 - - -

PN600

THE COMMISSIONER: It's consistent with the rates, okay, from December.

PN601

MR WILLIAMS: Paragraph 51 appears to be the second - - -

PN602

THE COMMISSIONER: Right. Yes.

PN603

MR WILLIAMS: Are you able to give some further context in relation to what you say in subparagraph 2(b)?---So the group of employees that I was dealing with have been with the company a long time. They were at much, much higher rates than what was paid in the industry, and I was explaining to them that if new employees were appointed to the same roles, they would be employed at considerably lower rates.

PN604

When you say 'new employees', new employees in what roles?---Say, for example, forklift.

PN605

Mr McLeod has been a witness here. Would you step the Commissioner through how either Mr McLeod or somebody who was employed in Mr McLeod's role would be affected?---So, in Mr McLeod's case, as a forklift operator, he was earning \$31 an hour and the new agreement would allow us to bring a forklift operator in at a minimum of \$25.50, or even less, \$24.50.

PN606

That would depend on classification, wouldn't it?---Yes.

PN607

What is Mr McLeod's classification under the proposed agreement?---Level 3.

*** PETRUS GERHARDUS MARTHINUS ELS

XN MR WILLIAMS

PN608

Level 3?---Mm-hm.

PN609

If you employ a new fork driver at level 3, what's your understanding of how that person would be paid?---At level 2.

PN610

So how would that employee's pay rate likely compare with Mr McLeod's pay rate?---It would be considerably less.

PN611

Mr Els, can you recall whether or not in that explanation you gave, which is recorded in paragraph 52, whether you told employees specifically that all classifications under the new agreement would be less than they were under the 2018 agreement?---No, I did not. I was referring to the group of employees who were there.

PN612

Mr Els, with those points of clarification, are the matters and facts set out in that statement, your first statement, true and correct to the best of your knowledge?---Yes.

PN613

Thank you. I tender the statement.

PN614

THE COMMISSIONER: Any objection, Mr Buckley?

PN615

MR BUCKLEY: There is one minor objection, Commissioner, and that is to paragraph 34 of Mr Els' initial statement.

PN616

THE COMMISSIONER: 34?

PN617

MR BUCKLEY: Yes.

PN618

THE COMMISSIONER: Yes.

PN619

MR BUCKLEY: Where he purports to give an opinion about what the employee participants understood at the end of the meeting.

PN620

THE COMMISSIONER: Yes, what do you say, Mr Williams?

*** PETRUS GERHARDUS MARTHINUS ELS

XN MR WILLIAMS

PN621

MR WILLIAMS: Commissioner, we defend the paragraph. I might push, for a start, the mantra that we're not bound by the rules of evidence because I know you follow them as and if it's appropriate, and we would accept that Mr Els can't give evidence of the actual view or the actual understanding of the employees. Two of them have come along to give their understanding. But the test is, in fact, not what their understanding was, the test is whether the employer took all reasonable steps, and there are cases, of course, on what that means. So, it's relevant to the issue of whether or not the company has taken all reasonable steps because if Mr Els had not had that view, that is, if he wasn't satisfied that they held those views or had those understandings, then a reasonable employer would have had to take some more steps. It goes to the issue of whether you can be satisfied that the employer has taken all reasonable steps in the sense that if Mr Els had had a different belief, it would be pretty hard to draw that conclusion.

PN622

Now, whether or not his view is correct is another issue and not relevant to the test, necessarily. So, we defend it on that basis that it reflects that the company was satisfied that it had done its job.

PN623

THE COMMISSIONER: Well, Mr Els is giving evidence here that he understood the seven employees understood that the company was intending to lower the pay

rates for new employees who would be covered by the 2023 agreement in the future and doesn't qualify it.

PN624

MR WILLIAMS: It doesn't make it untrue. We will talk about this in submissions, of course.

PN625

THE COMMISSIONER: I will allow it. It's in.

PN626

MR WILLIAMS: Thank you.

PN627

MR BUCKLEY: That's all I have in relation to the statement, Commissioner.

PN628

THE COMMISSIONER: Thank you. All right, I will admit that and it will form part of the court book. Does that cover both statements?

PN629

MR WILLIAMS: I think they are both before you now, Commissioner, yes, I did seek to - - -

PN630

THE COMMISSIONER: All right. So no objection to the other statement as well, Mr Buckley?

*** PETRUS GERHARDUS MARTHINUS ELS

XN MR WILLIAMS

PN631

MR BUCKLEY: No.

PN632

THE COMMISSIONER: All right, I'll admit both of them, thank you.

PN633

All right, you will be asked questions in cross-examination now.

PN634

MR BUCKLEY: Yes, thank you, Commissioner.

CROSS-EXAMINATION BY MR BUCKLEY

[1.20 PM]

PN635

Mr Els, in your statement you've referred to the operations covered by the 2023 agreement as further processing, logistics and warehousing?---Mm-hm.

PN636

That's correct?

PN637

THE COMMISSIONER: You will need to give oral answers, please?---Sorry.

PN638

Make sure you state 'Yes', 'No', or whatever your answer is; okay?---Yes.

PN639

Not just nod your head?---Yes, Commissioner.

PN640

MR BUCKLEY: With the 2023 agreement, there's two employer companies that are covered by that agreement; that's correct?---If you don't mind, could you just explain that?

PN641

Sorry. I will just turn to - if we look at - does Mr Els have a copy of the court book in front of him?---I do.

PN642

Could you turn to page 203 of the - sorry - - -?---Yes, I have it in front of me.

PN643

Start at the beginning, page 200 of the digital court book. You can see that that's the 2023 enterprise agreement?---Yes.

PN644

If we can then just turn over to page 203?---Yes.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN645

If you look down to section 4.1 Coverage, it talks about the parties covered?---Yes.

PN646

The parties bound, and it says at paragraph (a) the company, 4.1(a)?---Yes.

PN647

So the company is bound?---Mm-hm.

PN648

But then if we just go up to the Definitions and Interpretation in clause 2 - - - ?---Yes.

PN649

- - - you will see the company means Cannon Hill Services Pty Ltd and Australian Country Choice Production Pty Ltd?---Yes, I understand.

PN650

So there's two different companies that are covered by this agreement?---Yes.

PN651

But both of those companies, they're part of the ACC group of companies, if you like, the ACC business?---Under the same umbrella, yes.

PN652

So, between them, those two companies employ a total of seven employees who work in the further processing, logistics and warehousing section that that agreement covers?---Yes.

PN653

That was also true back in December 2022 when you sat down to negotiate the new agreement?---Yes.

PN654

Prior to this agreement, there was a 2018 enterprise agreement?---Yes.

PN655

That covered the same section of the operations?---Yes.

PN656

As I understand it, you weren't with ACC back when that enterprise agreement was negotiated?---Yes.

PN657

But your understanding is that that agreement was negotiated at a time when ACC had one major customer and they had a cost plus arrangement with that customer?---Yes.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN658

So it's fair to say that during the life of the 2018 agreement, or at least while that cost plus arrangement was in place, whether wage rates were competitive with other manufacturers might not have been as important as when there was no cost plus arrangement in place. Would you agree with that?---Yes.

PN659

When that cost plus arrangement disappears, ACC decides they need a more competitive wage structure or wage cost structure in that new agreement?---Yes.

PN660

And that's because now that they don't have one major customer, they are going to need to compete for more business from a variety of customers?---Yes.

PN661

It's also the case that ACC intends to employ more than just these seven employees under the new 2023 agreement; that's correct?---Not necessarily.

PN662

Not necessarily? Well, let's explore that a bit. The 2023 agreement, at the moment there are only seven employees who are covered by it; right?---Yes.

PN663

The wages of those seven employees are going to increase, aren't they, under the terms of that agreement?---Yes.

PN664

So the wage cost structure isn't going to go down for those seven employees, is it?---No.

PN665

The wage cost structure is only going to go down if you have other employees employed on those other rates; isn't that the case?---Yes, but only if we get more customers and more business.

PN666

But if you get more customers - sorry, I withdraw that. So the intention is that if you're able to attract more business, you will then employ more people under this agreement?---Yes, that is a possibility.

PN667

From that, it's obvious that ACC wanted to negotiate this new agreement with the lower cost structure before you employed any more new workers in the processing, logistics and warehousing section; is that right?---Yes, if we get more business.

PN668

And so one of the reasons that you wanted to negotiate the new 2023 agreement is you wanted that new cost structure in place before employing new employees?---Yes, I think that's fair to say.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN669

Is one of the reasons that you wanted to negotiate that cost structure with the existing seven employees because you thought that if you told them that, you know, 'We're going to increase your wages', that they wouldn't object to your reducing the wages for new employees?---No, categorically no, because I was honest with them right from the start about what is happening with the business, the situation that the business is in. We haven't got the customers, the business is working at a substantial loss every month and the business is trying hard to find new customers. So, the business may employ new people, but, in the same breath, potentially, in a year's time, the business may only have the seven employees that they currently have.

PN670

So there are these seven employees who work in further processing, logistics and warehousing?---Yes.

PN671

That's the name of the section?---Mm.

PN672

They're the only ACC employees who work in that area?---Yes.

PN673

But they're not the only workers who work in that area, are they?---No.

PN674

There are labour hire workers - - -?---There are.

PN675

- - - who work - - -?---In further processing.

PN676

In further processing?---Further processing, yes.

PN677

What about in logistics and warehousing?---No.

PN678

About how many labour hire workers work in - - -?---Approximately 30.

PN679

About 30?---Three zero, yes.

PN680

And obviously ACC pays a labour hire company for providing those workers to them?---Yes.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN681

I think it would be fair to say that the cost structure or the cost of the labour hire workers is presumably lower than what it would be if you employed them under the 2018 agreement?---I don't think that is necessarily the case because, with labour hire people, there's a lot of costs that get together to form the total cost. That's not the reason for employing labour hire employees. The reason is to have flexibility because that part of the business, given the lack of business, only work a certain number of hours, so they don't necessarily work 38 hours a week. Potentially, they may only work 30 hours or 25 hours a week.

PN682

Are they casual employees?---Yes.

PN683

The seven employees who are employed by the ACC companies, they're all permanent employees; is that right?---Yes.

PN684

THE COMMISSIONER: While we're on the labour hire thread, I'm just going to jump in because I was in-house counsel for a labour hire for 14 years, so I understand how the charges work. There's base rate, there's burdens, such as super, workers comp, payroll tax, et cetera, and there's margin. Do you know the rate of pay that is being paid to the employees, the rate?---Plus there's casual loading, Commissioner, yes, but I cannot sit here and say to you I know exactly. I have those numbers, but it's not numbers that I can recall.

PN685

Okay. That was your question, though, but you weren't able to get there, Mr Buckley, in terms of the rate paid to employees, because you get a loaded up rate, you know, it might be \$50 an hour once everything's thrown on. Who knows what it is?

PN686

THE WITNESS: Yes.

PN687

THE COMMISSIONER: But you could know what the rate paid to employees at a base rate is?---Commissioner, I don't - I can't tell you whether it is in fact cheaper to employ labour hire people than to employ the people ourselves. In this case, because our employees are earning very high rates, it is likely that it would cost us less, but the main reason for employing labour hire employees there is for the flexibility.

PN688

Okay?---The fact that we don't have to give them 38 hours a week.

PN689

Yes.

PN690

MR BUCKLEY: Sorry, I might just check something, Commissioner.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN691

The 2018 agreement, which covers the further processing, warehousing and logistics area, that has provision for employing casual employees, doesn't it?---Yes.

PN692

So you could have the flexibility of casual employees under the 2018 agreement if you wanted?---Yes.

PN693

You talk about a meeting that happens on 14 December in 2022. That's prior to bargaining commencing for the 2023 agreement, isn't it?---Yes.

PN694

That's - - -?---Excuse me, could you just repeat the question?

PN695

On 14 December 2022, there's a meeting that you have with the employees?---Mm-hm.

PN696

And Molly Auvaa?---Yes.

PN697

And that's prior to bargaining commencing?---I would say bargaining commenced on 2 December.

PN698

Okay?---If you allow me to check my dates.

PN699

Perhaps if you could take a look at paragraph 25 of your statement, Mr Els. Actually, no, sorry, I've given you the wrong - - -

PN700

THE COMMISSIONER: Parties, at page 23 of the book, which is the F17, there's a declaration that on 6 December the NERR was given to employees.

PN701

MR BUCKLEY: Yes.

PN702

THE WITNESS: Yes.

PN703

THE COMMISSIONER: Does that assist?

PN704

MR BUCKLEY: Yes, thank you.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN705

THE COMMISSIONER: I must say the NERR has both employers' names on it and only one F17 has been completed on behalf of both entities. Typically, I like to see a NERR from each company in a separate F17, just so you know. I don't know that - - -

PN706

MR WILLIAMS: I will give some consideration to that, Commissioner. Of course, there's no problem with two related employers (indistinct) as one.

PN707

THE COMMISSIONER: No, but you don't normally see that and I approve lots of agreements. Typically, an F17 from each employer because you've got the numbers of employees per employer.

PN708

MR WILLIAMS: Yes, it's a fair point. We'll have a look at that, depending on how we go today. We could be in touch with your chambers about that. There will be an easily - at least, we would say at least an easy - - -

PN709

THE COMMISSIONER: Well, the NERR can't be overcome, but I don't know it's an issue.

PN710

MR WILLIAMS: Well, it could be - - -

PN711

THE COMMISSIONER: But the F17 should specify five employees employed by this entity and five voted, et cetera, and two employees. Do you understand?---Yes.

PN712

Very good. All right.

PN713

MR WILLIAMS: It's not my place to ask the question right now, but Mr Els could probably - he might know, he might know whether - he might be able to tell you now.

PN714

THE COMMISSIONER: Yes, I've just not come across that before. Ask away, thanks.

PN715

MR BUCKLEY: Thank you, Commissioner.

PN716

On 2 December, the Notice of Employee Representational Rights is issued to - - - ?---I think it's the 6th.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN717

The 6th, sorry?---Yes.

PN718

On 6 December, that notice is issued to employees?---Yes.

PN719

On 14 December, there's a meeting with employees, so Ms Auvaa and yourself, you speak to all seven employees; is that correct?---Yes.

PN720

Ms Auvaa runs through a presentation about what the company wants in terms of the new enterprise agreement; okay?---Yes.

PN721

And so you make it clear that ACC wants to reduce pay rates for new employees?---I made it clear that ACC want to reduce the cost base of that part of the business.

PN722

But you also made it clear to all of those employees that their wages would not be decreased, didn't you?---Yes.

PN723

You told them that they would receive a pay increase, not necessarily how much, but they would receive a pay increase when the new agreement was improved?---Yes, among other.

PN724

I'm not suggesting that was the only thing you said. Obviously there was a whole range of matters covered?---Yes.

PN725

In your statement, you then talk about some meetings that are held in February where the enterprise agreement is explained to employees?---Yes.

PN726

In between that meeting in December and the meetings in February, obviously there would have been a number of bargaining meetings; is that correct?---I believe there were 11 in total.

PN727

Eleven?---Approximately.

PN728

You indicate in your statement that you were one of the bargaining representatives for the company for this enterprise agreement?---Yes.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN729

You said, normally, the general manager of the section is also a bargaining representative?---Yes.

PN730

In this case, that was Molly Auvaa?---Yes.

PN731

In the statement, you actually refer to her as being the former general manager; that's right?---Yes.

PN732

When did she leave that role? Was that during the period that bargaining occurred?---My recollection is that her redundancy came into effect around 4 February.

PN733

So not until after the agreement had been negotiated?---Yes.

PN734

Was it the case that you and Ms Auvaa were the only bargaining representatives involved in the bargaining meetings apart from the employee representatives?---Are you saying it weren't or if - - -

PN735

No, no, was it just you and Ms Auvaas as the bargaining representatives for the company in these bargaining meetings?---Mostly as bargaining representatives for the company. At times, there were other management people and, at times, your Mr Dormer was also in a meeting.

PN736

Sure?---Mm.

PN737

THE COMMISSIONER: I'm sorry?---Mr Dormer.

PN738

Who's Mr Dormer?---Mr Cottrell-Dormer.

PN739

MR BUCKLEY: Mr Cottrell-Dormer, I believe?---James Cottrell-Dormer.

PN740

THE COMMISSIONER: Yes, thank you.

PN741

MR BUCKLEY: Did you attend all of the bargaining meetings yourself?---Yes.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN742

You did? Okay. Are you able to tell us at what stage, at what bargaining meeting or at what stage of the bargaining, the company produced the rates of pay that it wanted for new employees?---My recollection is that it was around the 17th, although it may have been quite a bit earlier because I have minutes that set out the next steps and, in my minutes, I said that we would issue the representatives with a draft in the week of - the first week of January, but then other events occurred. The union brought an application to Fair Work and so it was postponed a few times, but my recollection is that by the 17th, the rates were put to employees.

PN743

By the 17th, do you mean 17 January?---Of January, yes.

PN744

This year?---Yes.

PN745

THE COMMISSIONER: While we're on it, rather than me coming back to it, how were they put?---Commissioner, my recollection was that before we issued a draft, Ms Auvaas had a presentation with the tables of the rates as a slide.

PN746

Is that the document that we had a look at earlier?

PN747

MR WILLIAMS: No, it's not. I think Mr Els will be able to clarify whether that document is available.

PN748

THE COMMISSIONER: Isn't that dated 17 January?

PN749

MR WILLIAMS: There is a document of 17 January, but - - -

PN750

THE COMMISSIONER: Which you haven't shown him.

PN751

MR WILLIAMS: Perhaps we should give it to him.

PN752

THE COMMISSIONER: All right.

PN753

THE WITNESS: Yes, I'm aware of the document. This was my presentation.

PN754

THE COMMISSIONER: Your presentation?---Mm.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN755

Is that what you're talking about? Is that dated 17 January?---It is, but what Ms Auvaa and I did was both of us prepared documents and then we used USBs and we would put our USB in the computer and we would show employees. So, this was my presentation.

PN756

Right?---And she had a page just with the rates.

PN757

And she used the USB to do it?---Yes.

PN758

Do you still have access to that?---Unfortunately, I don't. That's why I said my best recollection is that occurred by the 17th.

PN759

Had you emailed it to each other?---We did not.

PN760

What did the rates look like, what was on the screen?---The rates are the rates that were in the draft agreement, which was the draft agreement or the agreement that was discussed during the access period.

PN761

So the final rates?---It was the final rates.

PN762

They were shown on a screen?---Yes.

PN763

Is it schedule 2? Is that what you showed employees?---Yes.

PN764

That's at page 98 of the court book?---Yes, Commissioner, it's schedule 2, page 35 of the enterprise agreement.

PN765

So that was shown to the seven employees on 17 January?---My best recollection, Commissioner.

PN766

All right, thank you. Ask away.

PN767

MR BUCKLEY: Thank you, Commissioner.

PN768

THE COMMISSIONER: Sorry, before you do, did she make the rates or did you make the rates? Who decided the rates?---Ms Auvaa did a lot of market research and she had a spreadsheet where she worked with an analyst in the business and then she developed the tables that eventually went into the enterprise agreement.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN769

She'd discussed them with you before the meeting, hadn't she?---Yes, she did. We discussed a spreadsheet of her research and what we were proposing.

PN770

So you would have had an exchange of emails, would you?---Not the table that went on the presentation, no, Commissioner, but certainly the spreadsheet.

PN771

Were there any drafts of the table?---I have spreadsheets, Excel spreadsheets, with information of lots of different businesses and their rates and then what our proposal was going to be, yes.

PN772

So you've got some material there?---Yes.

PN773

So I could look at that?---Yes.

PN774

Okay. You were discussing this in January, were you?---Definitely, yes.

PN775

There would be a tick-tacking back and forward between you and her?---I don't know if I'd call it tick-tacking, Commissioner, but, yes, we were discussing it.

PN776

Were you meeting in person or were you sending emails to each other and you might be massaging the rates a little bit?---We had regular meetings, sometimes early in the mornings.

PN777

But there will be some emails? No?---There could be, Commissioner, I don't know.

PN778

I am going to require production of any emails that you have between you and her about the rates?---Yes.

PN779

All right, thank you.

PN780

MR WILLIAMS: May I ask a question about that?

PN781

THE COMMISSIONER: Yes.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN782

MR WILLIAMS: There's no resistance to that at all. I don't understand why you need to do that. It may have the consequence, and I just wanted to get it clear between all of us, that we will have to defer some of Mr Els' evidence and certainly closing submissions. Does that seem right? Do we all agree that that might be necessary? It just makes a difference to my schedule for the afternoon.

PN783

THE COMMISSIONER: I don't mind you producing them afterwards. I mean he's given evidence that he doesn't really think there were many emails and this will just see whether or not there is anything that was produced.

PN784

MR WILLIAMS: I just wondered whether you - - -

PN785

THE COMMISSIONER: What do you want to do with closing submissions? I mean do you want to do oral? I'm happy to order transcripts. I'm in your hands.

PN786

MR WILLIAMS: Commissioner, I might need to take an instruction about that. I think it's fair to say that the process has been a bit more complex than I thought it would be and there's now a lot of evidence, whereas I had assumed there would be relatively little evidence. Obviously my misjudgement. So, I had been content to proceed on the basis of oral submissions, but I might take an instruction as to

whether now, given the volume of different information, we might be better off looking at the transcript, and I say that in particular because, Commissioner, the witnesses this morning gave answers which, as you would have seen, were different at different times, and I think it might be helpful if perhaps we could just put all that context and try to - - -

PN787

THE COMMISSIONER: Yes. Well, I propose to order the transcripts.

PN788

MR WILLIAMS: Yes.

PN789

THE COMMISSIONER: I typically order the five-day service, which turns around in about a week.

PN790

MR WILLIAMS: Yes. If you are going to order the transcript and have regard to it, then it may be helpful if the advocates can give you whatever guidance they can about how you should interpret the transcript and, if that's the case, perhaps we need to come back for oral submissions. If we are going to do that, then there would be obviously time to build in over that process whereby Mr Els locates and provides any other documents that you might need.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN791

THE COMMISSIONER: Yes, we can have him back if we need to.

PN792

MR WILLIAMS: If need be.

PN793

THE COMMISSIONER: Yes, but, typically, I just, you know, call for material and people just produce it following the hearing and they can tell me anything else they want about it and if the other side wants to cross-examine, they can do that, but otherwise it's just information that I think I should have.

PN794

MR WILLIAMS: No, no, I understand that.

PN795

THE COMMISSIONER: Yes.

PN796

MR WILLIAMS: I guess my point is that I haven't seen it and I don't know whether I would want to ask Mr Els some questions about it. Mr Buckley is in the same position and, in any event, it looks like we might be best placed if we had the transcript before we come back here anyway.

PN797

THE COMMISSIONER: Oral or written submissions? I don't mind. I'm in your hands, parties, I don't mind. Once I get the transcript, you can tell me what you want to do.

PN798

MR WILLIAMS: Perhaps let's get to the end of the day and work that out.

PN799

THE COMMISSIONER: Yes.

PN800

MR WILLIAMS: I might have a discussion with Mr Buckley about it.

PN801

THE COMMISSIONER: All right.

PN802

Obviously you can't recall everything, but there might have been a bit of to-ing and fro-ing with emails with a table. We'll see. But you definitely remember that it was shown at the 17 January meeting by Ms Auvaa?---Commissioner, I say to the best of my recollection.

PN803

Okay, that's fine. All right, ask away, thanks, Mr Buckley.

PN804

MR BUCKLEY: Thank you, Commissioner.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN805

Perhaps if I could take you to paragraph 52 of your statement, Mr Els?---Paragraph?

PN806

52?---52, yes.

PN807

Page 156 of the court book, Commissioner.

PN808

In that paragraph, you have described or you've summarised what you said about wages and wage increases to the employees at the meetings that were held on 2 and 6 February; is that correct?---Yes.

PN809

At paragraph 52(a), we see you've told them that ACC had lowered the rates in the 2023 agreement from those in the 2018 agreement?---Yes.

PN810

To achieve the objective of lowering the cost structure; that's correct?---Yes.

PN811

You told them that you had lowered the rates. Did you expressly tell the employees that some of the rates in the 2023 agreement were lower than the 2018 agreement, but that some of the rates in the 2023 agreement were higher than the 2018 agreement?---I can't exactly recall what I told them, but I did tell them that some of the rates were lower and, in fact, I showed them the cases where they were lower, the categories where they were lower, yes.

PN812

How did you show them that?---Well, I had the information with me, the information was up on a screen and I pointed it out. They each had a draft of the document in front of them.

PN813

So, at the meeting, the employees each had a draft of the 2023 agreement; is that correct?---Yes.

PN814

You say you pointed out to them information that was displayed on a screen?---Yes.

PN815

Was that part of your presentation to the employees?---Yes, as part of my presentation.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN816

I'll clarify that. At these meetings, is it the case there was a presentation by you and there was a presentation by Ms Auvaa?---Sometimes. Sometimes one of us did a presentation, sometimes both of us did a presentation. I think on Thursday the 2nd, she was still there and, to the best of my recollection, there was one presentation. Every employee had a draft - had a copy of the new EA in front of them and we also had it up on the screen.

PN817

Just finally, I'll just take you to paragraph 53 of your statement, Mr Els?---Yes.

PN818

You say there:

PN819

In my meetings with the affected employees, none of them asked any questions about the difference between the pay rates that they'd receive and the lower pay rates that would be received by future employees.

PN820

What I want to clarify with you is when you say 'meetings', are you talking about the meetings on 2 and 6 February or more generally?---I think I've clarified before that in the series of meetings, the 11 meetings, that there were many questions. On that specific occasion, I don't recall any of them asking - on that

meeting of the 2nd, Thursday the 2nd, I don't recall any of them specifically asking me a question about that.

PN821

Well, there was a meeting on 2 February and a meeting on the 6th; is that correct?---Yes.

PN822

You were present at the meeting on the 6th as well?---Yes.

PN823

What about that meeting? Were there any questions about the difference?---There were a few questions at the meeting on the 6th, but that mostly referred to back pay and things like that.

PN824

But no questions about the difference between the pay rates they would receive and the pay rates for new employees?---No.

PN825

Thank you, Commissioner, that's all I have for Mr Els.

PN826

THE COMMISSIONER: Thank you. Anything in re-examination?

PN827

MR WILLIAMS: Commissioner, arising out of the cross-examination, there is no re-examination. If you have some questions, of course, something may arise out of that.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN828

THE COMMISSIONER: All right.

PN829

Mr Els, you were taken to 52 of your statement and you said just now that there was a document that you put on the screen. Is that your PowerPoint presentation that forms an annexure?---Commissioner, again, that was a slide that I don't have in part of my slideshows. I was looking for it and I could not find it.

PN830

You had a slide?---There was a slide put up.

PN831

With rates?---With rates, and every employee had a copy of the agreement in front of them.

PN832

So what does the slide look like? What does it show?---Exactly what is in schedule 2.

PN833

Okay. So, again, you had done that on 17 January, or Ms Auvaas had done that on 17 January and, on 2 February, you're showing that same slide, are you?---Yes. Commissioner, we were going to start the access period very early in January, so we had already prepared that documentation by then.

PN834

I think you were asked whether or not you were comparing the 2018 rates to the employees as against the 2023 rates?---Yes.

PN835

And I thought you answered 'Yes'. If so, how did you do that?---So the employees had a copy of the new agreement in front of them with the schedule rate on table 2. It was up on the screen. I had the information about which of the categories were lower than the 2018 agreement, which were higher and I explained that to them.

PN836

How did you have that information?---I don't understand.

PN837

You just said you had information about categories that were higher and categories that were lower. What information did you have?---I had the information which categories were higher, which were lower. I checked which were higher and which were lower.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN838

What did you say to the employees?---I said to the employees, because the employees who I was talking to in the case of food manufacturing were level A and B and the employees from the logistics and warehouse were level 3 and level 4, so I showed them that in level A, the minimum and the maximum was lower than the 2018 rates, that in the case of level B, the maximum was lower than the 2018 rate, and that in the case of level 3 for logistics and warehouse, both the minimum and the maximum were lower.

PN839

How did you do that?---It was up on the screen. I pointed it out to them.

PN840

So you've got a document?---I've got a document, yes, Commissioner.

PN841

That's not in your material?---No, this is just something that I prepared for my notes here.

PN842

For the purposes of this hearing?---Yes. It was on a spreadsheet.

PN843

I'm asking you what did you do on the day and you say that there's some sort of document that you put on the screen; is that right?---It was a slide, there was a presentation, Commissioner, there was a table.

PN844

But I haven't seen it?---There was a table. Commissioner, I've explained to you that was not part of my presentations that I have in my material.

PN845

We were talking earlier about 17 January?---Yes.

PN846

We are now talking about 2 February?---Yes.

PN847

You're saying that you produced something to show employees that some rates were higher and some rates were lower?---I - - -

PN848

I don't have that, so what is it and when did you make it and where is it?---So, I'll explain again, Commissioner. Every employee had a copy of the EA in front of them, schedule 2.

PN849

Just the schedule 2?---Which is a table, yes, with rates.

PN850

Did you print off all of the agreement for them?---The whole agreement?

PN851

Did you print it off for them?---They had the whole agreement in front of them.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN852

Each of them?---Each of them, and it was - - -

PN853

Had you printed it off for them?---I printed it off myself, but I also emailed it to them the day before.

PN854

Yes, I've got the email where they've got a document pack?---Yes, I printed a hard copy to them and I handed it out to each of them.

PN855

So they've got the 2023 whole agreement in front of them?---Yes.

PN856

Seven copies?---Yes.

PN857

What else have they got?---All the materials that were sent to them the previous night I printed out.

PN858

Everything?---Everything.

PN859

So they've got the 2018 agreement?---Yes.

PN860

Now talk me through what you did in comparing the 2018 and 2023 agreements?---So the 2023 agreement was in front of them, the table was up on the screen and I had the information and I would say to them, 'Look at category 4 there. That's the rate in the 2018 agreement' - they had the 2018 agreement - 'That was the rate, so you will see that that rate is lower, the minimum is lower, the maximum is lower.'

PN861

Did you speak to it? You didn't have a document?---No, I spoke to it.

PN862

I thought just before you said there was a document that you had?---I have a document. I didn't print that document to them. I had a document that I was talking from.

PN863

Why isn't it in your material?---Commissioner, I didn't know that it had to be in my material.

PN864

Okay?---It's not something that was - - -

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN865

That's okay. So today you say you were speaking to a document that you'd earlier prepared?---Yes.

PN866

And is that what you've got in front of you?---No, this is a document - I copied a spreadsheet and put it on my notes so that I can talk from it now.

PN867

So had you done some work, had you, to compare the 2018 and 2023 rates?---Yes, absolutely.

PN868

And you spoke to that?---Yes, we had a whole spreadsheet with the 2018 rates, the 2023 rates, the MIA rates, Hilton's rates, Prima's rates and everybody else that we looked at.

PN869

Was that shown to any of the voting employees?---No.

PN870

But you spoke to - - -?---That was part of our back-up material.

PN871

So tell me, when you're speaking about the forklift rate, what did you say?---Commissioner, I didn't specifically talk about the forklift, but the gentleman before, Chris McLeod, is a forklift operator on level 3, so I specifically spoke about level 3 for logistics and warehouse and said to them that the minimum of that rate is 26 and the maximum is 32.89; in the previous agreement, it was the flat rate of 30.

PN872

Right, because he's a level 3, or he's proposed to be a level 3?---No, he's - yes.

PN873

Under the new agreement?---Yes.

PN874

Did you speak to - you've said in your material that a forklift is going to be a level 2?---A forklift could be a level 2, it could also be a level 3. If you look at the analysis in schedule 1, it shows that in schedule 1 of the enterprise agreement.

PN875

At PE7 of your statement at page 351, you've said that forklifts under the 2018 agreement is equivalent to a level 2?---Yes.

PN876

You haven't said 'or a level 3'?---No, but in the agreement, if you look in the agreement at schedule 1, Classification Structure, it says, under level 2, 'Forklift licensed' and then level 3 says, 'Works at a level higher than level 2' and - - -

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN877

So you told Mr McLeod, did you, that any forklift drivers would be level 3?---No, I didn't.

PN878

I'm not - you tell me what you said?---No, no, I said to them that a forklift driver could potentially, in this new agreement, be appointed at \$24.50 minimum.

PN879

What are you reading from?---I'm just reading from a table that I have in front of me.

PN880

That you've prepared for this hearing or that you - - -?---Yes.

PN881

So you don't know what you said to him specifically - - -?---Commissioner - - -

PN882

- - - on the day of the meeting?---I'm trying to recall, but it's been quite a few months and quite a few things have happened since then. I know I pointed out to them what levels would be earning less and what levels would be earning more.

PN883

You didn't put it on the screen and you didn't produce it in writing, you spoke to it?---I'm not certain. I explained to you that we had it on the screen. If you say I didn't put it on the screen, I don't understand what you mean.

PN884

So you did have something on the screen?---I did have something on the screen.

PN885

You had a document on the screen? Because I thought earlier you said you simply spoke to it?---No, I - - -

PN886

You do have a document, do you?---I said I had schedule 2 on the screen.

PN887

Yes, I understand that?---Yes.

PN888

But, when contrasting it to 2018 rates, your evidence earlier was that you spoke to it?---I spoke to it because they had a copy of the 2018 agreement, the table, there.

PN889

Yes?---The table of 2023, so it was easy for me to speak to it and explain to them.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN890

When you spoke about the forklift role for future employees, tell me what you said?---I'm going to find it hard to tell you exactly. I don't - - -

PN891

To the best of your ability?---I said to them that a forklift driver could potentially be a level 2. At the moment, the rate is \$30 an hour. In the new agreement, a forklift driver could potentially be a level 2 or a level 3, but, as a level 2, they would earn 24.50, and a forklift driver under the 2018 agreement is on \$30 an hour.

PN892

All right. Did you tell them that the level 3 rate was a 10.22 per cent increase, or thereabouts, compared to the 2018 level B rate, because you've told me that a level 3 logistics and warehouse is equivalent to a level B under the 2018 agreement. Did you tell the employees that, on that same classification, in the new agreement, it's more than a 10 per cent increase on the base rate?---I don't think I said to them that it was more than a 10 per cent increase, Commissioner.

PN893

All right?---I understand that - - -

PN894

Do you have this in front of you? I don't think you do.

PN895

MR WILLIAMS: The witness doesn't have that in front of him.

PN896

THE COMMISSIONER: No.

PN897

I'll show it to you. So this is something, Mr Els, I prepared earlier. I hope the calculations are correct. You've very welcome - I'm happy to provide an Excel spreadsheet with this and you can do your own calculations and rounding, et cetera. On the left-hand column here is the rates where they finish up under the 2018 agreement?---Yes.

PN898

And I think the last increase was about 2021?---Yes.

PN899

Then these are where the new rates are proposed. You can see in red there that's where the rates fall below the 2018 agreement and the ones in orange is where the base rate - and I'm only considering the base rate - is higher than the 2018 agreement?---Mm-hm.

PN900

You can see there that not all rates went under - - -?---No, I'm aware of that, Commissioner.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN901

Because you've done some work on this, haven't you?---Yes.

PN902

So did you tell the employees that some rates were more than 3 and a-half per cent?---I don't recall that I specifically told them because I - yes, I don't recall that I specifically - I was more interested in showing them that some rates, you know, employees could be earning less. The reason why some are more and some are less is, because of our market analysis we realised that in some cases we had to pay more if we ever wanted to attract skills.

PN903

Why didn't you tell the employees that?---I can't give you a reason why I didn't tell the employees that, other than thinking that it would be obvious to them if they look at the 2018 agreement and the 2023 agreement. I provided them with all the material that I needed to, and I highlighted the areas that I thought were problematic. I didn't think it would be problematic for them to get a 10 per cent higher right.

PN904

But the employees - - -?---But they wouldn't get a 10 per cent higher rate. They would just a 3.5 per cent increase.

PN905

The employees' evidence is that they're being told by the company that rates need to go down for new employees?---Yes.

PN906

But that's not true for all classifications, is it?---I would say generally it is.

PN907

Well, not for - - -?---We've allowed - - -

PN908

Not for the lowest level food manufacturing roles. They're 2.7 per cent increase by - - -?---Which level are you referring to?

PN909

It's level C. They're your - the people who come in, aren't they?---Yes, Commissioner, but people at that level generally in terms of the meat industry award, stay at that level for about three months.

PN910

And they move up to level B, do they?---Yes.

PN911

And then that rate increased the base rate from 23.59 to 25.50. It went up. That's - you're proposing an 8 per cent increase there?---And that was because it - our market research showed us that the rates that we were paying at that level needed to be higher, yes.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN912

You didn't tell employees that?---I can't - I don't specifically think I mentioned to them that that rate would go up by 8 per cent, no.

PN913

Do you think that's important?---I didn't think it was important, but if you feel it is important, then I'm willing to take your word for it.

PN914

Well, it's one of my considerations?---But - yes, anyway, I didn't think it was - I think it was more important to explain to them the rates that would be lower.

PN915

All right. Well, I suppose - - -?---I suppose I'm not allowed to ask you why it is a consideration for you.

PN916

It's a consideration under the Act, Mr Els. I have to determine whether or not you've done everything reasonably necessary to provide employees with information, and I would think telling - see, this is it. In the material you're providing notification that new employees need to get paid less than the 2018 rates. But you haven't done that across the board. You've paid - you're proposing to pay more, but not telling the employees who are voting on that?---But not more
- - -

PN917

MR WILLIAMS: Could I just - a point of clarification there. The information was before the employees including at that meeting, because they had the 2018 rates and the 2023 rates.

PN918

THE COMMISSIONER: Yes.

PN919

MR WILLIAMS: More accurately - and I will accept this - he it wasn't emphasised in Mr Els' explanation of it.

PN920

THE COMMISSIONER: Yes, I accept that.

PN921

MR WILLIAMS: Perhaps it isn't quite accurate to say - - -

PN922

THE COMMISSIONER: Yes, I understand that.

PN923

MR WILLIAMS: - - - to the witness that the information wasn't provided.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN924

THE COMMISSIONER: No, but their evidence is that they were told that new employees need to get paid less?---But that was correct, because a new employee would be paid less than what they are paying.

PN925

Yes. Yes. But they - - -?---Are being paid.

PN926

They haven't necessarily qualified it in that way, though, Mr Els?---No, no, I'm just explaining to you, Commissioner.

PN927

Yes. Well, they haven't qualified it in that way. They've given some evidence today that assists, and I'll obviously go through all of that evidence, but that's it - was there genuine - that's why we're here?---I understand.

PN928

Did they genuinely agree?---I understand that, Commissioner. I - why I'm taking it back is I've gone this is the third enterprise agreement that I've done in a year, and with this enterprise agreement I've taken more care than any other enterprise agreement to explain to employees simply because I was aware of all the issues around this one, and the AMIEU objecting along the way. And so that's why I am slightly surprised. But I am surprised - I don't need to explain - you know, you may not be surprised.

PN929

I have a job to do, Mr Els. So was there any change between December and February? Because at 33 in your statement at page 152, Ms Auvaa in December - your evidence is that she's telling employees - the seven employees, that new employees would be paid at the new lower rates in 2023, i.e. rates which were lower than the rates in the 2018 agreement?---Yes.

PN930

Without qualification?---Yes.

PN931

So - - -?---So - yes, sorry, Commissioner.

PN932

Was there a change from December to February?---No.

PN933

Then at paragraph 48, at page 155, this is the explanation that you've provided, and you say:

PN934

The clause explains that the 2023 agreement provides for an annual 3.5 per cent increase at the commencement of the agreement, 3 per cent on the anniversary of the agreement for each year thereafter. This represents the increase from the current agreement.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN935

So that's what you were explaining to employees?---Yes.

PN936

Do you think that that's correct?---It's correct as far as the group of employees who I was speaking to, yes.

PN937

Okay. But 11.1 and 11.3 are a bit different, aren't they, in the agreement? So it can be found at page 76 of the court book. 11.1 deals with some degree with existing employees and cementing their current rates. Do you agree with that?---Yes.

PN938

But 11.3 on its own - and you're explaining it in the material provided to employees. How does it do what the agreement actually does? Do you think it marries?---I'm not certain what you mean, Commissioner.

PN939

Well, the rates aren't 3.5 per cent across the board, are they?---It's 3.5 per cent for the people who are employed.

PN940

But 11.3 doesn't say that, and then your explanation to employees doesn't give that qualification, because I think you're trying to do that in 11.1, but at 11.3 there's no such qualification. Do you agree with that? Let's go to the table. It might assist you in the table a bit better, at page 48 of the court book?---What page are you referring to?

PN941

Forty-eight?---Forty-eight of the - - -

PN942

Of the court book?---Yes.

PN943

So the red numbers down the bottom?---Yes. And on page 48 what are you referring to?

PN944

Sorry, so 29 deals with somewhat the existing employees. Maybe not just them, but it certainly touches on existing employees, and informs them that if they're currently receiving rates higher than that's protected?---Yes.

PN945

Your explanation there tells them that?---Yes.

PN946

Gives them that knowledge?---Yes.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN947

Going down to 31 your explanation is that this clause explains:

PN948

The proposed agreement provides for an annual 3.5 per cent increase at the commencement of the agreement, 3 per cent on the anniversary of the agreement for each year thereafter. This represents an increase from the current agreement.

PN949

?---Yes.

PN950

Is that right?---Yes.

PN951

How?---Because those are the only people that we employ.

PN952

Where it says:

PN953

This represents an increase from the current agreement.

PN954

?---I understand what you mean. I suppose if you look at the words, it doesn't. It refers to the employees and their current rates, would get a 3.5 per cent increase.

PN955

So how - well, how does the clause - that might not be your - the clause - but this explanation telling current employees that but it doesn't inform them about new employees, does it?---Commissioner, you know, I think ever since we started negotiating we discussed the subject of new employees many, many, many different times with this group. So I think they fully understood. And those words may not explain what you - as you say exactly what it is. It's not a 3.5 per cent increase on the 2018 agreement. It is a 3.5 per cent increase for the people on their current salaries. But they were fully, fully aware of how it would work for new employees.

PN956

Anything arising, Mr Buckley?

PN957

MR BUCKLEY: No, thank you, Commissioner.

PN958

MR WILLIAMS: And nor from me, Commissioner, thank you.

*** PETRUS GERHARDUS MARTHINUS ELS

XXN MR BUCKLEY

PN959

THE COMMISSIONER: No. Thank you. All right. Thank you, Mr Els, you're now excused from giving evidence?---Thank you, Commissioner.

PN960

We'll get those documents from you.

<THE WITNESS WITHDREW

[2.20 PM]

PN961

MR WILLIAMS: Thank you, Commissioner. I'll take instructions from Mr Els when I'm able to. I do have instructions from others instructing me, that in relation to some of the information in those spreadsheets may be commercially confidential. That's obviously a matter we can manage but we may write to you - either have a directions hearing or ask your associate how you'd like to handle that. I'll also talk to Mr Buckley about that as well.

PN962

THE COMMISSIONER: Yes. Well, perhaps you can show me the unredacted, show me what you'd like to redact, and - - -

PN963

MR WILLIAMS: And, if necessary, we'll ask you for an order - for special orders
- - -

PN964

THE COMMISSIONER: Send it to my chambers and, you know, we can say, well, you know, what - you can tell me what's important and why it needs to be redacted.

PN965

MR WILLIAMS: I'm very sure that we can sort that out.

PN966

THE COMMISSIONER: All right.

PN967

MR WILLIAMS: And beyond that, Commissioner, I think I'm going to take on notice your issue about whether or not the declaration needs an amendment to take into account the multiple employers. We'll do that if necessary. And - - -

PN968

THE COMMISSIONER: Yes. I'll take you to rule 24, I think it is:

PN969

Each employer that is covered by the agreement must lodge a declaration.

PN970

MR WILLIAMS: Yes, I understand.

PN971

THE COMMISSIONER: Yes.

PN972

MR WILLIAMS: There are - undeniably there are two employers covered, so we'll look at that and fix that up if need be. As you say, the NERR is what it is. Can't change that now but wouldn't seem to have created any disadvantage to anyone. And then, as far as I understand it, you'll order the transcript in the five-day turnaround, and perhaps we'll have to make a - once we've reviewed that, Mr Buckley and I will have to decide whether or not we want to deal with that only in written submissions or in oral submissions. But, if so, we'll get in touch with chambers.

PN973

THE COMMISSIONER: Fabulous. I'm in your hands. Anything else today?

PN974

MR BUCKLEY: Yes, there is.

PN975

MR WILLIAMS: I'm sorry, there is. Mr Buckley has a witness, and I did have a couple of questions for him.

PN976

MR BUCKLEY: Sorry, yes, there is - I'd ask that Mr Cottrell-Dormer be - - -

PN977

THE COMMISSIONER: Mr Els, out of the witness box, please. I'd forgotten about your witness. Thanks, Mr Els.

PN978

MR BUCKLEY: I suspect Mr Cottrell-Dormer will be just outside. Perhaps I can indicate at this stage that the AMIEU will be relying upon its outline of submissions, document 16; and the witness statement of Mr Cottrell-Dormer, document 17 in the digital court book.

PN979

THE ASSOCIATE: Thank you. So please state your full name and address.

PN980

MR COTTRELL-DORMER: James Peter Cottrell-Dormer, (address supplied).

PN981

THE ASSOCIATE: Do you want to do an affirmation?

PN982

MR COTTRELL-DORMER: Yes, please.

<JAMES PETER COTTRELL-DORMER, AFFIRMED [2.23 PM]

EXAMINATION-IN-CHIEF BY MR BUCKLEY [2.23 PM]

*** JAMES PETER COTTRELL-DORMER

XN MR BUCKLEY

PN983

MR BUCKLEY: Commissioner, Mr Cottrell-Dormer's statement is at page 418, I believe, of the court book.

PN984

Mr Cottrell-Dormer, could you please just state your full name for the record?---James Peter Cottrell-Dormer.

PN985

You're an official with the Australasian Meat Industry Employees Union?---That's right.

PN986

For these proceedings today you've prepared a witness statement. Is that correct?---Yes.

PN987

Is that witness statement a document two pages in length and dated on 23 March 2023?---Yes.

PN988

That witness statement has two attachments to it?---Correct.

PN989

Each of those attachments is an enterprise agreement?---Yes.

PN990

Are you prepared to affirm that the contents of your affidavit are true and correct?---Yes, I am.

PN991

Thank you, Commissioner. I'd ask that Mr Cottrell-Dormer's statement be tendered or - - -

PN992

THE COMMISSIONER: Any objection?

PN993

MR WILLIAMS: No, objection.

PN994

THE COMMISSIONER: No objection. All right. Mr Cottrell-Dormer's statement is admitted.

PN995

MR BUCKLEY: That's all I have, Commissioner.

PN996

THE COMMISSIONER: Thank you.

CROSS-EXAMINATION BY MR WILLIAMS

[2.25 PM]

*** JAMES PETER COTTRELL-DORMER

XXN MR WILLIAMS

PN997

MR WILLIAMS: Mr Cottrell-Dormer, you've annexed the 2022 production enterprise agreement to your statement?---Yes.

PN998

If you have the court book there, I just wanted to ask you a couple of questions in relation to the boning room classifications which start at page 520 of the book?---Sorry, I haven't got the book but I do have the agreement, and it's the classifications.

PN999

Yes, page 48?---But I'm happy to look at the book.

PN1000

Schedule 4.

PN1001

THE COMMISSIONER: The red-numbered - - -?---Yes. Thank you.

PN1002

Down the bottom.

PN1003

THE WITNESS: You did say 20?

PN1004

MR WILLIAMS: Schedule 4. It's page 520 of the - - -?---Page 520, I beg your pardon.

PN1005

Page 48 of the agreement?---Yes. I'm there.

PN1006

Just at the top of the schedule 4 it says, 'Boning Room Grandfather Classification'?---Yes.

PN1007

What's that a reference to?---To employees who commenced working for Australian Country Choice, from memory, prior to 2003.

PN1008

Going back a long way?---That's right.

PN1009

On the next page, 'Boning Room Preserved Classification'. What's that a reference to?---Again a date of time that those people commenced employment.

*** JAMES PETER COTTRELL-DORMER

XXN MR WILLIAMS

PN1010

Right. Over the page it says, 'Boning Room New Classification'. Is that - do we take it that that's a reference to employees who are engaged after the agreement was approved?---Yes, that's - I think that's correct.

PN1011

You'd agree with me that the - although the minimum working pays appear to be unchanged - and I'm just looking at one example only, the classification level 5, so the top classification for boners. Whereas the minimum weekly pay doesn't change for the different classes of employee, the piece rate per kilogram changes quite significantly?---The - in some classifications the people weren't eligible for a piece rate in the previous agreement. So they've actually had piece rates brought to them.

PN1012

I understand that. But if we look at the boning rates, these are a piece rate, aren't they? The minimum is not obviously but the base rate of pay is a piece rate?---Yes, the minimums are the same, correct.

PN1013

The base rate is a piece rate per kilogram?---Yes, that's right.

PN1014

Yes, for boners. It's pretty common, isn't it?---I beg your pardon?

PN1015

It's pretty common that the boners to be paid on a piece rate?---In our industry.

PN1016

Yes. Yes. Yes. So there's no - I'm not being critical of that at all. But whereas the dollars per kilogram piece rate for classification 5, boners, were grandfathered, you agree that's - what - 54.5 cents per kilogram?---Correct.

PN1017

If you look over the preserved classifications it's 45 cents a kilogram?---Not 45 cents, but 0.045 of a cent, yes.

PN1018

Of a dollar?---Of a - yes.

PN1019

That would be 45 cents?---Okay. I've got you.

PN1020

My math is questionable at this time of day. So 45 cents a kilogram - - -?---Yes.

PN1021

THE COMMISSIONER: Four and a half cents.

*** JAMES PETER COTTRELL-DORMER

XXN MR WILLIAMS

PN1022

MR WILLIAMS: Four and a - - -?---Yes. It is. It is four and a-half cents. That's right.

PN1023

I'm sorry. Yes. It's certainly questionable - not my strong suit, Commissioner. And it's five cents - 5.45 cents for the grandfathered classification - not 54.5 as I said?---Yes. Sure.

PN1024

Yes?---Yes.

PN1025

And if we go over to the new classification?---I'm there.

PN1026

Over the page for level 5 boners, it's down to 3.98 cents per kilogram?---Yes.

PN1027

Yes. So it appears that the rate - the piece rates evolved over time in a downward trend?---For some.

PN1028

For some, yes. Well, for boner level 5 it certainly has anyway?---Yes.

PN1029

Yes, and the - - -

PN1030

THE COMMISSIONER: Like your solar tariff feed-in.

PN1031

MR WILLIAMS: Sorry, Commissioner?

PN1032

THE COMMISSIONER: Your solar tariff feed-in.

PN1033

MR WILLIAMS: Yes, that's right.

PN1034

THE COMMISSIONER: If you locked it into a higher rate, you're good.

PN1035

MR WILLIAMS: No, that's right. The - it's a common thing. But the way that these - the successive negotiations appear to have gone is that presumably for at least what the employer said were economic reasons, the piece rate has reduced over time. Correct?---Yes.

*** JAMES PETER COTTRELL-DORMER

XXN MR WILLIAMS

PN1036

As a result of market forces, competition. Who knows what else. Costs. Whatever?---I think there's lots more factors than that but - yes.

PN1037

But it has come down?---Yes, a bit.

PN1038

But it looks like as the rates have come down, under these agreements the rates for employees who were employed at the time were preserved?---That's right.

PN1039

And it's only the employees who come in after the agreement is approved who take the next rung down?---That's right.

PN1040

Yes. Okay?---And those employees were - those who were yet to be employed at that time, are all on the same minimum rate, that's right.

PN1041

All on the same minimum rate, yes?---Yes.

PN1042

We take it, though, that an experienced boner at level 5, classification level 5, in an ordinary week is going to earn a lot more than \$1376, though?---I would hope so.

PN1043

Yes. Some of them are up to \$100,000 a year, aren't they? The good ones?---Yes, absolutely.

PN1044

Yes, so they have an ability to earn more?---Yes.

PN1045

But if you're a new employee then you don't have the same ability to earn as much above your minimum rate?---That's correct.

PN1046

So and you're covered by the production agreement? The union is covered by it?---That's right.

PN1047

You're the bargaining representative in relation to it?---Yes.

PN1048

Can you recall whether or not you supported its approval by the members?---We allowed the members to vote for the approval of the agreement based on their - we don't campaign for yes or no during that time. It's the members who approve the agreement.

*** JAMES PETER COTTRELL-DORMER

XXN MR WILLIAMS

PN1049

You didn't oppose the approval by this Commission of that agreement, though, did you?---No.

PN1050

No?---I think - - -

PN1051

And my point is really simple, is this, it's a short point - the fact that you have successful enterprise agreements which reduce rates of pay is not regarded by the union as necessarily legitimate?---No. The circumstances of so many members and people eligible to vote, I think, on that production agreement are quite different.

PN1052

But you accept as a union - sort of, in my experience - that there are occasions when the viability of an enterprise requires a flexible approach to these things?---I don't know that it related to the viability of the enterprise, whether - that were the

reasons for the reductions in those rates. You'd have to question the company on that.

PN1053

I suppose that's right. They were the questions I had, Commissioner. Thank you.

PN1054

THE COMMISSIONER: Is there anything arising?

PN1055

MR BUCKLEY: No, nothing arising out of that, Commissioner.

PN1056

THE COMMISSIONER: All right. Thanks, Mr Cottrell-Dormer, you're excused from giving evidence. Thank you?---Thank you, Commissioner.

<THE WITNESS WITHDREW

[2.32 PM]

PN1057

MR WILLIAMS: Now, we're back where I thought we were about 10 minutes ago.

PN1058

THE COMMISSIONER: So we'll have the emails from Mr Els and that's it. That's all the documents that need to be produced?

*** JAMES PETER COTTRELL-DORMER

XXN MR WILLIAMS

PN1059

MR WILLIAMS: Well, I think there were a couple of documents mentioned. The - Mr Els - certain of Mr Els' spreadsheets, so we'll hopefully find those. He referred to - he wasn't sure about emails but if there are any we'll find them. And my instruction was - and I can say this now Mr Els is out of the witness box - my instruction was that a search for that spreadsheet - that slide, has been unproductive, but we'll have another go.

PN1060

THE COMMISSIONER: Is that the one of Ms Auvaa?

PN1061

MR WILLIAMS: Yes.

PN1062

THE COMMISSIONER: Right. But if there's something between Mr Els and Ms Auvaa leading up to it, which I expect there would be, you know, in the - - -

PN1063

MR WILLIAMS: To be honest, Mr Els wasn't sure but - - -

PN1064

THE COMMISSIONER: Yes.

PN1065

MR WILLIAMS: - - - we can - we'll have a look, that's for sure.

PN1066

THE COMMISSIONER: Yes, well, just seek to produce.

PN1067

MR WILLIAMS: Yes.

PN1068

THE COMMISSIONER: It seems as though there were meeting minutes provided to the seven employees, which came about today.

PN1069

MR WILLIAMS: I'll take instructions about that as well.

PN1070

THE COMMISSIONER: I mean, if there are, I think that's important for the Commission to know, following meetings minutes were distributed by email.

PN1071

MR WILLIAMS: I'll take instructions.

PN1072

THE COMMISSIONER: What do you say about that, Mr Buckley?

PN1073

MR BUCKLEY: I agree that it's relevant material. It should be - the Commission should be able to consider it.

PN1074

THE COMMISSIONER: All right. It's just unusual to have emails sent to production employees and - - -

PN1075

MR WILLIAMS: But the interesting thing is - - -

PN1076

THE COMMISSIONER: If it's there, I'd like to see it.

PN1077

MR WILLIAMS: Yes. No, I understand that. As I say, there's no resistance, and I've certainly seen that put forward to the Commission in similar circumstances. But the interesting point about that is that the issue of whether or not bargaining has proceeded in good faith doesn't seem to be relevant to your consideration at all. What seems to be relevant is whether there was a proper explanation, and that really gets picked up in the access period.

PN1078

THE COMMISSIONER: Yes.

PN1079

MR WILLIAMS: So it's not a - I don't think it's a gap in the record for the employer not to have provided them, but the question, having been asked by you, I will take the instruction and it may be - - -

PN1080

THE COMMISSIONER: It may be helpful for you; I don't know.

PN1081

MR WILLIAMS: It may be. It may be, yes.

PN1082

THE COMMISSIONER: You know, people getting fed stuff along the way. I just don't - if it exists, I don't know why it's not before the Commission. I agree with you, my consideration is, you know, 180(5) which turns into 188, and but if it's there I'd like to see it.

PN1083

MR WILLIAMS: I understand the request and, as I said, I'll take the instruction.

PN1084

THE COMMISSIONER: Okay. I'm going to - this is my document. I'm going to mark this FWC1, the spreadsheet that I created.

EXHIBIT #FWC1 SPREADSHEET CREATED BY THE COMMISSION

PN1085

THE COMMISSIONER: I will admit the entire court book and will mark that FWC2.

EXHIBIT #FWC2 COURT BOOK

PN1086

THE COMMISSIONER: Did you want to rely on the 17 January PowerPoint?

PN1087

MR WILLIAMS: Yes.

PN1088

THE COMMISSIONER: And we'll get copies.

PN1089

MR WILLIAMS: The witness considered it and referred to it, and said it was his document, so - - -

PN1090

THE COMMISSIONER: All right. We'll take it and we'll get some copies and hand them around, and I'll mark that FWC3.

EXHIBIT #FWC3 POWERPOINT DOCUMENT DATED 17/01/2023

PN1091

THE COMMISSIONER: There was a replacement for the 2015 - this morning there was some - - -

PN1092

MR WILLIAMS: Yes, that's right. That's a straight - - -

PN1093

THE COMMISSIONER: A straight replacement.

PN1094

MR WILLIAMS: Unbolding of the existing one.

PN1095

THE COMMISSIONER: Yes.

PN1096

MR WILLIAMS: And that one going in.

PN1097

THE COMMISSIONER: All right. Well, I don't think that needs to be marked then.

PN1098

MR WILLIAMS: No.

PN1099

THE COMMISSIONER: All right. Is there anything else, parties? Do we want to pencil in a date or you'll just let me know?

PN1100

MR WILLIAMS: I think we might have to consult diaries and let you know.

PN1101

THE COMMISSIONER: Yes.

PN1102

MR WILLIAMS: But I think from the company's point of view and understandably it wants to progress quickly, so that will be our objective, and I assume Mr Buckley's as well.

PN1103

THE COMMISSIONER: Do you want to set a date now, if you do want oral? If you don't want oral, then you can let me know, and you can just provide written submissions.

PN1104

MR WILLIAMS: Could we have 48 hours to advise you?

PN1105

THE COMMISSIONER: Sure.

PN1106

MR WILLIAMS: Sorry, I'm just trying to think logistically here now. It wouldn't be a bad idea to reserve a date just in case.

PN1107

THE COMMISSIONER: Absolutely. Fine. Let's see what we've got. We'll give it about seven days just up our sleeve for the transcript to come in, and then beyond that how long do you need?

PN1108

MR WILLIAMS: I'll be in oral submissions I couldn't imagine more than an hour.

PN1109

THE COMMISSIONER: No, but beyond receipt of the transcript how long would you want to - if I order it today, say it comes in late - say it comes in by 21 April-ish.

PN1110

MR WILLIAMS: A week.

PN1111

THE COMMISSIONER: So beyond that. All right.

PN1112

MR WILLIAMS: One week.

PN1113

THE COMMISSIONER: So we come into the long weekend, May day long weekend.

PN1114

MR WILLIAMS: ANZAC Day.

PN1115

THE COMMISSIONER: Do you want Tuesday, 2 May?

PN1116

MR WILLIAMS: If it turns out - - -

PN1117

THE COMMISSIONER: You'll have sore feet, won't you, Mr Buckley, from pounding the pavement.

PN1118

MR BUCKLEY: I certainly will, Commissioner, but - - -

PN1119

MR WILLIAMS: I actually have 2 May free.

PN1120

MR BUCKLEY: I'm free on 2 May.

PN1121

THE COMMISSIONER: We'll pencil it in. If you want oral submissions, you can have that day. If you don't, then we'll just vacate it.

PN1122

MR WILLIAMS: Thank you.

PN1123

THE COMMISSIONER: All right. Well, thank you, parties, for your participation. I look forward to receiving the material. We'll get the transcript to you as soon as we can. All right. Thank you. We'll adjourn.

ADJOURNED UNTIL TUESDAY, 02 MAY 2023

[2.38 PM]

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