



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER WILSON

C2022/6835

s.739 - Application to deal with a dispute

"Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union"
known as the Australian Manufacturing Workers' Union (AMWU)
and
Simplot Australia Pty Ltd
(C2022/6835)

Melbourne

10.00 AM, TUESDAY, 2 MAY 2023

PN1

THE COMMISSIONER: Good morning, parties. If I can start by taking the appearances, please. For the AMWU?

PN2

MS K PRESDEE: Thank you, Commissioner, Presdee, initial K, for the AMWU.

PN3

THE COMMISSIONER: All right, thank you, Ms Presdee. And also for Simplot?

PN4

MR P BOROBOKAS: If the Commission pleases, Borobokas, P, and assisting me is Mr Ryan Woods from Simplot.

PN5

THE COMMISSIONER: All right, thank you, Mr Borobokas, thank you for that.

PN6

Parties, as you know, this morning is for the purposes of arbitrating the dispute between you. I understand from the communications with my chambers over the course of the morning that, in terms of the witnesses, there's not a need for Mr Tuit to give his evidence other than through the witness statement. Have I got that correct?

PN7

MS PRESDEE: Yes, Commissioner, I don't wish to cross-examine Mr Tuit.

PN8

THE COMMISSIONER: Okay, thank you. There are four witnesses, two for the AMWU and two for Simplot, to give oral evidence in that case. All right.

PN9

Before we move into the hearing itself, are there any preliminary issues that I need to deal with from any perspective?

PN10

MS PRESDEE: Not from the AMWU's end, thank you, Commissioner.

PN11

MR BOROBOKAS: Not for my part.

PN12

THE COMMISSIONER: All right. Thank you, Mr Borobokas. The only question I do have is, in looking at the material, am I correct in thinking that you agree that the answer to question 1 is 'No'? I guess that's a question for you, Mr Borobokas, more than the applicant.

PN13

MR BOROBOKAS: Yes, Commissioner.

PN14

THE COMMISSIONER: Just to confirm as well, that's the case with you, Ms Presdee?

PN15

MS PRESDEE: That's correct, yes.

PN16

THE COMMISSIONER: On that basis, I don't need submissions, other than the ones that have been presented so far in respect of that particular question, so the focus then turns to question 2: 'If the answer to question 1 is "No", how should the casual maintenance workers at the Ulverstone site be classified?'

PN17

What I propose to do is turn to you, Ms Presdee, and allow you to start developing your case.

PN18

MS PRESDEE: Commissioner, I am not going to provide an opening statement. I am just going to let Mr Wickham know that our first witness will be Mr Gale and I would like to call Mr Gale.

PN19

THE COMMISSIONER: All right. Do we need to break for a minute or two while those arrangements are made?

PN20

MS PRESDEE: Hopefully not. I'm just texting him now.

PN21

THE COMMISSIONER: All right, thank you.

PN22

MR GALE: Morning.

PN23

THE COMMISSIONER: Good morning. Mr Gale, it's Commissioner Wilson speaking. Can you hear and see me acceptably?

PN24

MR GALE: Yes, thank you.

PN25

THE COMMISSIONER: All right, thank you. You know the purpose of you being here this morning, which is to give evidence. What I need to do in a moment is, through my associate, administer the oath or affirmation to you, which means that you declare to tell the truth in the proceedings. Normally, we offer people an opportunity to provide an oath, that is, to swear on a Bible or other holy book, but we can't do that unless you have one adjacent to you. I don't know what you do have. Are you prepared to proceed with an affirmation in that case?

PN26

MR GALE: Yes.

PN27

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

PN28

MR GALE: It's Darren John Gale, (address supplied).

<DARREN JOHN GALE, AFFIRMED [10.05 AM]

EXAMINATION-IN-CHIEF BY MS PRESDEE [10.05 AM]

PN29

THE COMMISSIONER: All right, thank you. Ms Presdee, if you'd proceed, please.

PN30

MS PRESDEE: Thank you, Mr Gale. You have given two statements in this matter. Do you have a copy of a statement given on 9 February 2023 with you?---Yes.

PN31

Have you read your statement?---Yes, I have.

PN32

Are there any amendments or corrections that you wish to make to that statement?---No, as far as I can see, it's accurate, yes.

PN33

I tender the statement.

PN34

THE COMMISSIONER: All right. The witness statement of Darren John Gale of 20 paragraphs on 9 February 2023 will be marked as exhibit A1.

**EXHIBIT #A1 WITNESS STATEMENT OF DARREN JOHN GALE
DATED 09/02/2023**

PN35

MS PRESDEE: Mr Gale, you also gave another statement in this matter, a statement that is dated 10 March 2023; is that correct?---Yes.

PN36

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

PN37

Are there any corrections or amendments that you wish to make to that statement?---No, I don't believe so, I think it's accurate again. I'm happy with that.

*** DARREN JOHN GALE

XN MS PRESDEE

PN38

Thank you. I tender the statement in reply.

PN39

THE COMMISSIONER: All right, thank you. The reply statement of Darren John Gale will be exhibit A2.

EXHIBIT #A2 WITNESS STATEMENT IN REPLY OF DARREN JOHN GALE DATED 10/03/2023

PN40

MS PRESDEE: Thank you, Commissioner, no further questions.

PN41

THE COMMISSIONER: All right, thank you. In a moment, I will turn to you, Mr Borobokas.

PN42

Mr Gale, Mr Borobokas is acting for Simplot. You need to listen to the questions that he has and answer them to the best of your ability. Given that we are conducting this by video, sometimes it becomes difficult to hear people or the connection becomes unstable. Now, if, for some reason, you don't hear him properly, just ask him to repeat the question. It's also best not to speak over each other because there's sometimes a delay between speaking and receiving and that can cause confusion with the transcription. So, with those requests, we will proceed with you, Mr Borobokas.

PN43

MR BOROBOKAS: Thank you, Commissioner. Just to inform the parties that occasionally I'm getting a Darth Vader type distortion sound coming through when some of us speak, so I might have to ask courteously if someone could repeat what they said.

CROSS-EXAMINATION BY MR BOROBOKAS

[10.08 AM]

PN44

Mr Gale, my name's Paul Borobokas. I'm the head of workplace relations at Simplot. I work out of the Chifley office. I'm just going to ask you a few questions about your witness statement; is that okay?---Yes, that's fine.

PN45

Mr Gale, as a delegate, you had a position on the Ulverstone site Employee Development Committee; is that right?---Yes, correct.

PN46

Just for the sake of using - I'll just refer to it as EDC from now on, rather than read the whole thing out; is that okay?---That's fine.

*** DARREN JOHN GALE

XXN MR BOROBOKAS

PN47

Yes. You're aware the EDC is a term which is contained in the enterprise agreement, that's the Simplot, CEPU, AMWU Employee Collective Agreement 2001-2004(sic)?---Yes, correct.

PN48

I'll just refer to that as the agreement, as the current agreement, if that's okay. As a fitter, Mr Gale, you underwent a classification review through the EDC; is that correct?---The EDC?

PN49

Yes. Is that correct?---Yes, I did, a long time back.

PN50

After having gone through the classification process as outlined in the agreement, your classification was elevated to a C7; is that correct?---That is correct, at the time, yes.

PN51

In that classification review process, your competencies were evaluated - are assessed; is that right?---That is correct as well.

PN52

Did you assess them yourself or were they assessed by someone else in that process?---No, it was an external provider that came in and did the assessment.

PN53

Were they assessed by a Mr John Vernam of the AMWU; is that right?---It was John Vernam.

PN54

That assessment was made against the metal and engineering competencies framework; is that right?---Yes.

PN55

So it would be right to say that the classification review process under the agreement that you undertook worked as it should?---It took a while to come to a conclusion, but it was finally assessed, yes, as successful.

PN56

Do you have any formal qualifications in assessing competencies against the established competencies framework criteria either in the award or the National Metal and Engineering Industry Competency Standards Implementation Guide, which is, you know - I should put to you that they are the two standards in the appendix 7 of the agreement?---I'm not - - -

*** DARREN JOHN GALE

XXN MR BOROBOKAS

PN57

Maybe I should put that another way to you then. Do you have any qualifications, or formal qualifications, or training in assessing competencies?---I have gone through the implementation process of how the system is meant to work, how the

skills are meant to be assessed according to the job classification or the job profile, but do I have any formal qualifications, no, I am not an assessor.

PN58

How would you go about seeking a reclassification again? Would it be through the ECD process again?---It's the EDC, Paul.

PN59

Yes?---We'll be - if we get to go for another classification review, then, yes, we will follow the process, we will go through the EDC.

PN60

I want to take you to the Maintenance Mondays that you've discussed in your witness statement at paragraph 8?---Is this in the first statement or the second one, Paul?

PN61

In the first statement, thank you?---Thank you.

PN62

Within your capacity as an area fitter, do you have responsibility for diagnostics, fault-finding and supervision of other maintenance workers? That's correct, isn't it?---I have the supervision of the employees that are allocated to me. I do have diagnostics that I perform on the day, but I expect those people to perform those tasks on my behalf prior. So, they are actually looking into these components and equipment to give me the initial assessment. Should they ever need any back-up or further judgment on anything they find, then, yes, I will go and make an assessment on that, but I rely on them to make it first.

PN63

Sorry, it didn't come through clearly as to who you rely upon. Can you please just repeat who it is that you rely upon regarding the diagnostics?---I rely upon the casual employee or the contractor that I have in performing the maintenance task that I've allocated to them. As I said, if they find anything in their diagnosis, then I will go and second-opinion it. Obviously, I am responsible for what they find and, therefore, I will have to take up their opinion or their assessments.

PN64

Sorry, Mr Gale, I didn't get that - I didn't get the last bit. Sorry, Commissioner, I'm getting some quality error messages popping up on my Teams.

PN65

THE COMMISSIONER: All right. Emily, could you turn your camera off and also, Mr Woods, if you could do the same, please. What we find is that sometimes that helps the stability of our network. So that's plan A. If that doesn't work, we'll work out plan B, but I haven't yet worked that out. Are you getting it when I speak as well, Mr Borobokas?

*** DARREN JOHN GALE

XXN MR BOROBOKAS

PN66

MR BOROBOKAS: Yes, but I don't have a vision of you, Commissioner.

PN67

THE COMMISSIONER: We've got that problem? All right. In that case, I am going to adjourn the proceedings and I'm going to myself withdraw and then I'll come back in and we'll resume. That often helps that particular problem. Emily, please adjourn.

<THE WITNESS WITHDREW [10.16 AM]

SHORT ADJOURNMENT [10.16 AM]

RESUMED [10.16 AM]

PN68

THE COMMISSIONER: Mr Borobokas, is that any better with the vision?

PN69

MR BOROBOKAS: No, Commissioner.

PN70

THE COMMISSIONER: Okay.

PN71

MR BOROBOKAS: I can't see yourself nor - - -

PN72

THE COMMISSIONER: All right.

PN73

MR BOROBOKAS: Mr Woods and Ms Mahoney are frozen.

PN74

THE COMMISSIONER: Okay. In that case, what I will need to do is to, unfortunately, downgrade to an audio hearing. Is that a problem for you, Mr Borobokas?

PN75

MR BOROBOKAS: No.

PN76

THE COMMISSIONER: No? Or Ms Presdee?

PN77

MR BOROBOKAS: Needs must, Commissioner. No, it's not.

PN78

THE COMMISSIONER: All right. We have been having an ongoing problem with this, certainly with my system, for a while. We thought it had been resolved, so I apologise for this. We will adjourn and then resume as an audio conference. All right, thank you.

SHORT ADJOURNMENT [10.17 AM]

RESUMED

[10.18 AM]

PN79

THE COMMISSIONER: Good morning again, parties. We are all resuming as an audio hearing only. That imposes some difficulties, but we will try and work around those. Now, Mr Borobokas, if you can continue with your cross-examination of Mr Gale, please.

PN80

MR BOROBOKAS: Thank you, Commissioner.

<DARREN JOHN GALE, RECALLED

[10.19 AM]

CROSS-EXAMINATION BY MR BOROBOKAS, CONTINUING [10.19 AM]

PN81

Mr Gale, I think I put the question to you that within your capacity as area fitter, you have responsibility for diagnostics, fault-finding and supervising other maintenance workers and you indicated, if I'm correct, that that is accurate, but you were saying that you may delegate some of the diagnostic or fault-finding activities to other employees that may include a casual or a labour hire maintenance worker; is that right?---Yes, I rely on the casual or the contractors to do the initial assessments. They are fault-finding first off because I do not have the time to go around everyone and do that task on their behalf.

PN82

Yes?---So they will do the initial assessment. If they find any issues that need bringing to my attention, then they will bring it to me and I will agree with their assessment that they find or do my own fault-finding, but, initially, I rely on them to do that for me because I, obviously, do not have the time to go around everyone and do it on their behalf.

PN83

When you are preparing for a shut and you don't have the casuals or labour hire maintenance employees to rely upon, do you carry out the diagnostics and fault-finding yourself; is that right?---Yes, going by fault-findings diagnosed on my own work, yes.

*** DARREN JOHN GALE

XXN MR BOROBOKAS

PN84

During a shut, when you are directing casuals to perform work, do you delegate all of your duties? For example, would you delegate safety and would you delegate the supervision of other employees to a casual?---I have the expectations, at times, of some of my casuals who have been with me longer, so, therefore, they have better site knowledge and I have an understanding of what they are capable of. Yes, I will delegate them to supervise another employee to, like, buddy them up, just for that safety factor. It's also a learning curve for them because, when you first start doing these work orders and preventative maintenance, it's all foreign to you, so they've actually got to learn that skill and develop that skill, so, by buddying up with someone else, they know the safety hazards that are involved

for the task, they know what's actually required with the fault-finding, their diagnostics, the components of the equipment that are critical, so, yes, I will delegate that to them at times.

PN85

Given your description of the different types of activities that the casuals would perform and your responsibilities, is it accurate to say that many of your competencies used in your job differ to those or are at a higher level than those of a C10?---My assessment of a C10 case would be someone that has just finished their training. They are still, you know, very green as to the way of the world and the actual engineering side of things. It's definitely something you have to develop and, I guess, as you perform these tasks more and more, the years will actually improve your knowledge and your skillset.

PN86

Is it your view, Mr Gale, that a C10 should be competent and capable of assembling and disassembling assembly lines, motors, conveyors, you know, plant and equipment that's commonly found in manufacturing, or, rather, at Ulverstone?---It's like with all things, you have to develop your skill, you have to become familiar with pieces of equipment. Unless you've took it apart before, you will have no idea how to actually go about that task. You would rely wholly and solely on someone else's input or rely upon a manual and very good instructions to do so.

PN87

Thank you, Mr Gale. Commissioner, I have no further questions.

PN88

THE COMMISSIONER: All right, thank you, Mr Borobokas. Ms Presdee, do you have any reply questions you wish to ask?

PN89

MS PRESDEE: Yes, thank you, Commissioner.

RE-EXAMINATION BY MS PRESDEE

[10.25 AM]

PN90

Mr Gale, you were asked about your reclassification process to take you to a C7. When was that?---That's a very good question now. I would have said it would be somewhere around about 2013. I reckon it would be 10 years ago.

PN91

And how long did it take?---I reckon I had to go through that process for probably two years, at least 18 months/two years to get through it.

*** DARREN JOHN GALE

RXN MS PRESDEE

PN92

So it probably would have been finished by 2015?---The reclassification started not long after I got to the plant. Like all of our fitters at that stage, if you started on a C10 on a trial basis, as soon as you did your three months' probation, you were then upgraded or allowed to go through the process of reclassification, with

a minimum of C8 to be your classification, and if you were at your skillset, then you would obviously go to the next level.

PN93

You just said then that the reclassification process that occurred in around 2013 was the expectation that you would go to a minimum of C8?---That's correct.

PN94

Do you know whether that was based on the job description or was it based on something else?---It's based on the job description and what is actually expected of you to perform. If you have a look at what our job description is, it will tell you that you have to be able to fault-find, you have to diagnose, you have to be able to assess equipment, which is a minimum of a C8.

PN95

Can I just ask you, you said that the requirement to diagnose and fault-find is a minimum of C8?---A minimum of C8, yes.

PN96

You know that from what?---Based on my years of experience and what I've heard from different industries or employers, that is the level of employment that would be the minimum for that role.

PN97

Thank you for that. Now, do you have a copy of Mr Edwards' witness statement in the room with you?---No, I don't.

PN98

Okay?---I haven't read Mr Edwards' statement and I - yes, I don't have one with me.

PN99

Mr Edwards has a job description annexed to his statement, which is dated 2019, so can I just confirm you have not been reclassified against a 2019 job description?---No.

PN100

Thank you. No further questions.

PN101

THE COMMISSIONER: All right, thank you, Ms Presdee.

PN102

Thank you, Mr Gale, for giving evidence. Now you are released as a witness and are free to leave, so thank you?---Thank you.

<THE WITNESS WITHDREW

[10.29 AM]

PN103

THE COMMISSIONER: Ms Presdee, that brings us to Mr Edwards, I assume?

*** DARREN JOHN GALE

RXN MS PRESDEE

PN104

MS PRESDEE: Yes. We will just have a swapping between Mr Gale and Mr Edwards going into the office.

PN105

THE COMMISSIONER: All right.

PN106

MS PRESDEE: Given that no one can see anything, I might just ask, Mr Edwards, are you in the room?

PN107

MR EDWARDS: I am now.

PN108

MS PRESDEE: Thank you. We are giving evidence by audio only, so I needed to check. Commissioner, Mr Edwards is ready.

PN109

THE COMMISSIONER: All right. Thank you, Mr Edwards. It's Commissioner Wilson speaking. Thank you for making yourself available. The first thing we need to do is to provide an oath or affirmation to you in which you declare to tell the truth. Now, ordinarily, we offer an oath or affirmation to people, but an oath can only be done if we have the relevant holy book next to you. I don't know whether you have that, but, in any event, are you prepared to proceed on the basis of an affirmation?

PN110

MR EDWARDS: Yes, not a problem.

PN111

THE COMMISSIONER: All right, thank you.

PN112

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

PN113

MR EDWARDS: Gary Edwards, (address supplied).

<GARY EDWARDS, AFFIRMED

[10.31 AM]

EXAMINATION-IN-CHIEF BY MS PRESDEE

[10.31 AM]

PN114

THE COMMISSIONER: Thank you, Mr Edwards, for doing that. Now I'm about to turn to Ms Presdee, who will ask you some questions about the written statements that you've provided and then, after that, Mr Borobokas, for Simplot, will be asking you questions as well. Ms Presdee.

*** GARY EDWARDS

XN MS PRESDEE

PN115

MS PRESDEE: Thank you, Commissioner.

PN116

Mr Edwards, I understand you have given two statements in this matter; is that correct?---Yes, I have.

PN117

Do you have a copy of a statement that was given on 10 February 2023, which has two annexures, GE1 and GE2?---I do.

PN118

Have you read that statement?---Yes, I have.

PN119

Do you have any corrections or amendments that you wish to make to that statement?---No, this is okay, yes.

PN120

Thank you. I tender the statement.

PN121

THE COMMISSIONER: The statement of Gary Edwards with two attachments will be exhibit A3.

**EXHIBIT #A3 WITNESS STATEMENT OF GARY EDWARDS
DATED 10/02/2023**

PN122

MS PRESDEE: Now, Mr Edwards, you gave another statement in this matter dated 10 March 2023. Do you have a copy of that statement with you?---Yes, I do.

PN123

Have you read that statement?---Yes.

PN124

Are there any corrections or amendments you wish to make to that statement?---No, I don't believe so.

PN125

Thank you. I tender the statement of Gary Edwards in reply.

PN126

THE COMMISSIONER: Thank you. The statement of Gary Edwards in reply will be exhibit A4.

**EXHIBIT #A4 WITNESS STATEMENT IN REPLY OF GARY
EDWARDS DATED 10/03/2023**

*** GARY EDWARDS

XN MS PRESDEE

PN127

MS PRESDEE: Thank you, no further questions.

PN128

THE COMMISSIONER: All right, thank you. Now Mr Borobokas will be asking you some questions, Mr Edwards. We have established that the line to where you are can be a little bit difficult, so just listen carefully to what he says. If you don't understand it for some reason, then just say back to him that that is the case and, again, if you don't understand the content of the question, say that back to him as well. Mr Borobokas.

PN129

MR BOROBOKAS: Thank you, Commissioner.

CROSS-EXAMINATION BY MR BOROBOKAS

[10.34 AM]

PN130

Good morning, Mr Edwards. My name's Paul Borobokas. I'm the head of workplace relations at Simplot Australia. I work out of the Chifley office. Thanks for your time this morning. Mr Edwards, you are classified as a C8; right?---Yes, that's correct.

PN131

A mechanical fitter C8. As a delegate, you have a position on the Ulverstone Employee Development Committee; is that right?---I do.

PN132

I will just refer to that as the EDC?---Yes, the Development Committee.

PN133

You are aware that EDC is a term in the agreement; is that right?---Yes, that's correct.

PN134

As someone who sits on the EDC, have you been involved in the classification review matter?---I have.

PN135

You've got over 20 years' experience at Ulverstone as a maintenance worker; right?---That's correct.

PN136

Must be a good place to work, I suspect, if you've been there for 20 years. You'd be pretty good at disassembling and assembling plant and equipment then, I imagine; right?---I have considerable experience with Simplot's equipment, yes.

PN137

That includes assembling and disassembling plant and equipment at the Ulverstone site?---Yes.

*** GARY EDWARDS

XXN MR BOROBOKAS

PN138

Assembling and disassembling is something you have done as part of your duties recently as a C8; is that correct?---As a C8 and higher.

PN139

As a C10 as well then?---A C10 is a lower classification than a C8.

PN140

Yes?---So, yes, if you're talking base trade, yes.

PN141

What you are saying is that you have been performing assembling and disassembling work as part of your duties as a C8 and also at what you called the lower level, C10, as well?---No, I said at a higher level as well.

PN142

At a higher level as well?---I would also be doing assembly of pneumatic equipment, which then would be a C7 and above.

PN143

Therefore, is it in your experience that a C10 has done some assembling and disassembling of plant and equipment at Ulverstone, a C8 has and also a C7 also does assembling and disassembling activities?---And also C6 - - -

PN144

Right?--- - - - would also be performing the same duties - similar duties.

PN145

Can you recall, during your apprenticeship, in your final years perhaps, did you have responsibility for assembling and disassembling plant and equipment?---As a fourth year apprentice, yes.

PN146

Can I please take you to paragraph 14 of your first statement. The last sentence there, it says:

PN147

As they are performing work that I do myself, I do not know why they are only classified at C10 classification.

PN148

Do you see that there?---Yes.

*** GARY EDWARDS

XXN MR BOROBOKAS

PN149

It's your evidence, therefore, what you've just taken me through, that some of the duties you are performing are within the scope of a fourth year apprentice and a C10 and those same duties might be performed by you at the C7 and the C8 level?---To correct you, Mr Borobokas, I have a base trade, which I use my base trade, and then there are higher levels that I've managed to lift myself to with experience and extra learning and courses. So, yes, my base trade would be at a C10 classification, but, with experience, I now consider that I am capable of

working at a higher level, and I would hope that the people that work performing the same work as I do would be able to do such work, and I think Simplot would like that too.

PN150

Thank you, Mr Edwards. I don't have any further questions for you, Mr Edwards. Thank you for your time.

PN151

THE COMMISSIONER: Thank you, Mr Borobokas. Is there any examination in reply from you, Ms Presdee?

PN152

MS PRESDEE: Yes, thank you, Commissioner.

RE-EXAMINATION BY MS PRESDEE

[10.40 AM]

PN153

Mr Edwards, when you were a fourth year apprentice, which was some time ago, you said that you were assembling and disassembling certain equipment; is that correct?---Yes. If we're referring to my fitting apprenticeship, my fitting apprenticeship, my Cert III as a mechanical fitter, I obtained that while I was working at Simplot because my base trade is as a boilermaker. I have completed two apprenticeships, in effect.

PN154

So, in effect, you may have been a special case in relation to duties that you may have been given because you were already trade-qualified?---Simplot gave us the opportunity, if we wanted to, to achieve a Cert III in mechanical fitting, so there's a few of the trades people at Simplot that - there were some motor mechanics and boilermakers that took the opportunity to get their CIV, so their Cert IV and Cert III in mechanical fitting.

PN155

So when you were talking about the assembling and disassembling, you were already a qualified tradesperson when you were - - -?---Yes, we were already performing those duties and we then went and got some extra TAFE qualifications to bring us up so that we could be certified at C3/C4.

PN156

When you were talking about assembling and disassembling pneumatic equipment, that was at the C7 level; is that correct?---Yes, because that's our pneumatic sorters, opti sorts, whatever Simplot requires us to recondition as required.

*** GARY EDWARDS

RXN MS PRESDEE

PN157

Is it fair to say that a basic skill required of a C10 is to assemble and disassemble equipment, but it depends upon the nature of the equipment that you are either assembling or disassembling as to whether it is properly classified at a higher level, a higher skill level?---Yes, in the case of a TOMRA sorter, which we

service, we have to test the equipment when it is removed from the machine, diagnose which parts are faulty, whether they be pneumatic, or perhaps a cyanide, or if there is an air issue, we diagnose that and then repair/replace as required. So, we diagnose it, we have some test equipment that we use so that we can plan it in and try it when it's external to the machine and, as required, we replace and return that equipment back to service.

PN158

So, a generic assemble and disassemble is not necessarily going to be the same for a C10 as for a C8 or a C7 or a C6?---If we were to replace every part with a brand new part, of course it will be back to its base condition. We are not required to do that. We are asked to assess which parts need to be replaced, so therefore we diagnose it, repair what needs to be repaired and put it back into service.

PN159

So, on a maintenance day, you are assembling and disassembling equipment, so the assembly and disassembly is in relation to the work order that you are given?---Assembly and disassembly is usually performed prior to a maintenance day or a Christmas shut. We diagnose if there - we can change our rotatable parts, but if there's a piece of equipment in our factory that's not performing as it should, there's a PM that would come out on a maintenance day that I would issue to a casual, the casual would then go off and rectify that problem.

PN160

When you say 'PM', what do you mean by that?---Which is - that's your maintenance day paperwork to check on the state of that equipment.

PN161

Thank you, no further questions.

PN162

THE COMMISSIONER: All right, thank you, Ms Presdee.

PN163

Mr Edwards, you are released as a witness and you are free to leave, so thank you very much for attending this morning?---Thank you.

<THE WITNESS WITHDREW

[10.46 AM]

PN164

THE COMMISSIONER: Ms Presdee, that concludes your evidence, I gather?

PN165

MS PRESDEE: Yes, thank you, Commissioner.

PN166

THE COMMISSIONER: All right. What do you wish to do about submissions? Do you want to come to those after the evidence from the respondent has taken place?

*** GARY EDWARDS

RXN MS PRESDEE

PN167

MS PRESDEE: Yes, thank you, Commissioner.

PN168

THE COMMISSIONER: All right. Okay. In that case, I will turn to you, Mr Borobokas.

PN169

MR BOROBOKAS: Commissioner, I think I'll call Mr Kakkar first, only because he's got some critical work to do today, so just to get him out of the way. I think some of the lines are down due to some electrical faults. I'm not sure whether they are back up, but I think I prefer to call Mr Kakkar first, if that's convenient.

PN170

THE COMMISSIONER: All right. How are we doing that?

PN171

MR BOROBOKAS: Yes, I'll send him a text message.

PN172

THE COMMISSIONER: All right, but does he need to join through the Teams link or through some other means?

PN173

MR BOROBOKAS: The Teams link.

PN174

THE COMMISSIONER: All right, we will just wait for him in that case.

PN175

MR BOROBOKAS: Thank you.

PN176

THE COMMISSIONER: What I might do is just adjourn the proceedings until he is available and then we will let you know and resume. All right?

PN177

MR BOROBOKAS: Thank you.

PN178

THE COMMISSIONER: Thank you.

SHORT ADJOURNMENT

[10.47 AM]

RESUMED

[10.51 AM]

PN179

THE COMMISSIONER: Good morning, Mr Kakkar, thanks for making yourself available. This is Commissioner Wilson speaking. Now you won't be able to see anyone else because we have suggested that they turn the cameras off because of some technical difficulties, so feel free to do that as well.

PN180

MR KAKKAR: Good morning, sir, how are you?

PN181

THE COMMISSIONER: Very well, thank you. Now we need to administer an oath or affirmation to you, which is an indication by you that you will tell the truth to the Commission. We normally provide an opportunity for people to provide an oath on a holy book, the Bible or other holy book, but I can't offer that unless it happens to be next to you. If that's the case, then I can only offer the affirmation. Will an affirmation be suitable to you?

PN182

MR KAKKAR: Sure.

PN183

THE COMMISSIONER: All right.

PN184

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

PN185

MR KAKKAR: Vishal Kakkar, (address supplied).

<VISHAL KAKKAR, AFFIRMED

[10.53 AM]

EXAMINATION-IN-CHIEF BY MR BOROBOKAS

[10.53 AM]

PN186

THE COMMISSIONER: All right, thank you, Mr Kakkar. Now I will ask Mr Borobokas, who is acting for Simplot, to start asking you some questions about your statement and then, after that's been done, Ms Presdee, who is acting for the AMWU, has the opportunity to cross-examine you about the evidence you have given. So, if you listen carefully to what both of those people say to you and then we'll proceed?---Sure.

PN187

Mr Borobokas.

PN188

MR BOROBOKAS: Thank you, Commissioner.

PN189

Good morning, Mr Kakkar. Mr Kakkar, have you made a statement in relation to these proceedings?---Yes, I have.

PN190

Do you have the statement in front of you?---Yes, indeed.

*** VISHAL KAKKAR

XN MR BOROBOKAS

PN191

Is that statement titled 'Witness Statement of Vishal Kakkar' and contains 21 paragraphs?---Yes, it does.

PN192

Is there anything you wish to amend in the statement?---No.

PN193

Thank you, Mr Kakkar. Commissioner, I wish to tender the witness statement.

PN194

THE COMMISSIONER: Thank you. The witness statement of Vishal Kakkar will be marked as exhibit R1.

EXHIBIT #R1 WITNESS STATEMENT OF VISHAL KAKKAR

PN195

Do you have any further questions, Mr Borobokas?

PN196

MR BOROBOKAS: No, thank you, Commissioner.

PN197

THE COMMISSIONER: Now, Mr Kakkar, I have indicated that Ms Presdee for the AMWU will be able to ask you some questions. We have had some technical difficulties this morning, so it may be that the line degrades at some stage. If that does occur and you can't hear the question properly, then just say that back to her and she'll repeat it to you?---Thank you, Commissioner.

PN198

Thank you, Ms Presdee.

PN199

MS PRESDEE: Thank you, Commissioner.

CROSS-EXAMINATION BY MS PRESDEE

[10.55 AM]

PN200

Good morning, Mr Kakkar. That's the correct way to pronounce your name?---That's very close, Kathryn.

PN201

Very close?---Thank you.

PN202

Thank you. Okay, I'll try. Can you hear me? How well can you hear me?---It's better - it's better now actually.

PN203

If you can't hear me, just ask me to repeat the question and I'll do my best to do so?---Sure, will do.

*** VISHAL KAKKAR

XXN MS PRESDEE

PN204

Thank you. You're the maintenance manager at Ulverstone?---I'm the engineering manager at Ulverstone.

PN205

Engineering manager?---Yes.

PN206

As part of your duties, you have responsibility for overseeing the maintenance shutdowns; is that correct?---Not just the maintenance shutdown, but maintenance shutdown is one aspect of my job, yes.

PN207

Among other things, the maintenance shutdowns?---Yes, that's one of the things.

PN208

Yes. Let's just focus on the maintenance shutdowns for the moment, please?---Mm-hm.

PN209

Now my understanding of the plant, there are a number of different areas that are involved in the various aspects of production; is that correct?---Yes, there is different areas in the factory.

PN210

And that for a maintenance shutdown, you have the two types of regular maintenance shut down: one is the Maintenance Monday and then there is an extended shutdown over Christmas/New Year usually; that's right, isn't it?---Yes, so there's every three weeks, which you are referring to, which is Monday, and there's generally an annual one, which falls on, yes, December/January.

PN211

With the regular three-weekly shutdowns, about how many casuals or contractors are brought in?---It's very sporadic, depending on what jobs are available and what our strategy defines, but it can range from probably as minimum as 10 to as probably as high as 100, to the best of my knowledge, but I don't have the exact number.

PN212

When you say 'what jobs are available', what do you mean by that?---So our department functions on a strategy basis. We have got preventative maintenance strategies built into our CMMS system. For people who don't know CMMS, it's a computerised maintenance system, which we use as MEX, and that strategy basically spits out every three weeks work orders, which basically tells us what work we have to do every three weeks and, based on that work, we plan our resources.

*** VISHAL KAKKAR

XXN MS PRESDEE

PN213

So what jobs are available is basically what the computer says needs to be done?---Yes, that's correct.

PN214

Is that just preventative maintenance?---It's not just preventative, it can be predictive, it can be corrective as well.

PN215

Who would feed in the details for the corrective maintenance?---So the job basically - the corrective maintenance basically starts from freights on the floor, so our permanent trade employees basically do daily checks and out of those daily checks comes corrective work. That's one of the avenues where the corrective work comes from.

PN216

So people like Mr Gale and Mr Edwards would be feeding into your - who would they be feeding into actually - - -?---They used to - - -

PN217

- - - about any issues?---They use the MEX system, which is CMMS system and they put a request in place if they find a job, a corrective job, and once a request is put in place, it goes to the following process, workflow process of the MEX system, which goes to the team leader and then goes to the planner for planning.

PN218

What's your involvement then in that?---So my involvement basically is, if the team is stuck at a certain stage, let's say, for example, a trade person has put in a request in place and that request has gone to a team leader and the team leader wants to consult and get my opinion or get my guidance or direction on that particular job, that team leader basically escalates that work to myself and then we discuss it before we approve it. Then it goes to - - -

PN219

Okay?---Once it's approved, it goes to the planner and if the planner needs my feedback or my inputs, then basically they escalate it to myself and then we go from there.

PN220

Do you have to approve it at the team leader stage?---Sorry, say again.

PN221

Do you have to approve it at the team leader stage?---Not every job. The team leader is - individually, as a team leader, they are empowered enough to approve the jobs, but if they're stuck, if they're not sure, then they escalate.

PN222

So you might not see or have any involvement in the approval process for corrective maintenance until the scheduling; is that correct?---Like I said, if there is any job which involves my involvement, the team leader will escalate the jobs to myself.

*** VISHAL KAKKAR

XXN MS PRESDEE

PN223

But that doesn't always happen?---That might not always happen.

PN224

Do you approve the maintenance work for each shutdown?---Can you please ask me a bit more specific? What do you mean by 'approval', and just before we go on the approval stage, if you look at the ratio of preventative maintenance versus corrective maintenance, the ratio is quite big on the preventative maintenance. We do a lot of preventative maintenance on the three-weekly shuts compared with the corrective work.

PN225

That's interesting to know, thank you, Mr Kakkar, but I was actually asking you in terms of do you approve the work schedule for a Maintenance Monday?---Once the pack is prepared, once the initial list is prepared, that initial list basically comes to myself for a quick review. If I'm concerned, if I'm not sure what that job is actually meant to be doing in the schedule, then I go back to the team leaders and consult the team leaders. So, yes, generally the list basically comes to myself for review.

PN226

Who then says, 'Okay, right, this is what we're doing this Monday?' Is that you or is that somebody else?---It's not one person, it's basically involvement of a team leader and myself, but now, since we have changed the structure of the department, it's the area manager as well.

PN227

So there's no one person that says, 'This is the final list for what we're doing at the' - - -?---The final list will be prepared once the review is completed by a team leader, myself or the area manager.

PN228

I think I understand it. So there's a review and then, after the review, it's then approved?---Yes.

PN229

Thank you for that. But in terms of then the work that may need to be done in terms of a Maintenance Monday, which you have said is largely preventative maintenance, how broken down is the work order in relation to a Maintenance Monday? Is it something like, for example, there needs to be a regular lubrication of a particular machine? Is that written down as 'lubrication of' or is it broken down even further than that?---So we're not a hundred per cent perfect in our MEX system and it's an evolving journey for us. We are improving every day and we basically wait for the feedback from our reliability team as well, so they are the team who basically improves our MEX work order system and instructions for doing the work orders as well, and it's a forever evolving improvement process. Existingly, right now, we have got a good system in place in terms of putting instructions in place to commence the document into a work order.

PN230

Yes, but, Mr Kakkar - - -?---I won't say it's a hundred per cent perfect, but it's a good system.

*** VISHAL KAKKAR

XXN MS PRESDEE

PN231

Mr Kakkar, that's not what I've asked you. I have asked you does it actually state - for example, if a machine needs to be lubricated as part of preventative maintenance, does the work order actually say, 'Machine needs to be lubricated' or does it actually break it down further than that?---So, like I said, our existing - we've got a lot of assets in our plant and those lot of assets have got PM strategies in place and, in those PM strategies, there's instructions to follow, like you're saying, for example, lubrication, or change the motor, change the pump, change the gear box, and we are not a hundred perfect in those instructions, but we are improving on this journey, but, right now, our existing system gives us enough details to perform the job.

PN232

Which is?---Which is the instructions.

PN233

So the work order includes a not necessarily perfect list of things to do - - - ?---Yes, the work order - - -

PN234

- - - to lubricate the machine?---Yes, the work order includes the list of things to do. It's called instructions in a work order.

PN235

So your instructions in a work order is lubricate the machine by taking - it then goes down into steps, does it?---Yes, there's steps in there in the work orders.

PN236

Mr Kakkar, do you have knowledge or experience in the National Metal and Engineering Competency Standard Implementation Guide?---I don't believe that I'm competent or an expert by any means in classification or the competency standard.

PN237

Right?---We have an EDC forum basically to discuss all the competency questions.

PN238

Do you know what the expectations are of a tradesman who is classified C6, for example? Do you know what work would differentiate that tradesperson from someone who is classified as a C7?---If I cross-reference the Manufacturing Award section, schedule A, it talks about what's included in C10, what's included in C11, so I have a very basic understanding of what's inclusive there in the Manufacturing Award, but, by all means, like I said, I'm not an expert in classification and competency standards.

*** VISHAL KAKKAR

XXN MS PRESDEE

PN239

So if you were to look at a requirement to perform preventative maintenance on a particular machine in the facility, would you be able to say what classification could do what work on that machine?---As a department manager, to fulfil our

duties to our customer, which is our production, we require qualified tradespeople and that's what we look for to execute our PM strategy.

PN240

Yes, but could you look at a machine and say, 'Well, that is obviously something that's a C6, C8, C10, C5 work'?---I can't see anything in the Manufacturing Award which specifies tasks based on classification.

PN241

No, but is the answer - - -

PN242

MR BOROBOKAS: Commissioner, can I just raise an issue. Mr Kakkar has already given evidence that he's not an expert and that he references the Manufacturing and Associated Industry Award's classification descriptions. Asking questions about those descriptions without the material in front of him I think has been unfair.

PN243

THE COMMISSIONER: Ms Presdee, I have been listening to the questions as well and have heard him say a couple of times that he's not an expert on competency assessment, so I think it's a fair point to make that Mr Borobokas has put forward.

PN244

MS PRESDEE: Very well, I'll just ask the one question.

PN245

Mr Kakkar, would it be fair to say that you could not readily determine what classification level is required for particular work?---Sorry, can you please repeat your question? Your voice was breaking down a bit.

PN246

Sorry. Just one moment. Is that a bit better?---Yes, that's clear.

PN247

Thank you. You have said that you are not an expert on the classification structure in the award. On a 'Yes' or 'No' basis, would you be able to determine what classification would be required to perform particular work on your site?---Like I've already mentioned that we want qualified tradespeople to work under limited supervision and our permanent trades team. That's what we look for, we look for qualified tradespeople.

PN248

THE COMMISSIONER: Mr Kakkar, that's not the question you were asked. There was a very precise question put to you, which was whether you would be able to determine what classification would be required to perform particular work on the site?---Yes.

*** VISHAL KAKKAR

XXN MS PRESDEE

PN249

Can you focus the answer to that question, please?---Yes, sure. Commissioner and Ms Presdee, like I said, I don't have a very detailed understanding of classification and competency, so I don't know what a C10 task is or what a C11 task is or what a C9 task is. I only go by what's written in the Manufacturing Award and it's basically less or limited supervision and we want qualified tradespeople who work under limited supervision of our permanent trades team.

PN250

MS PRESDEE: So your answer is 'No', no you could not identify?---I can't see anywhere in the award which specifies tasks based on classification. There's nothing I can see which specifies that replacing a bearing is a C10 task or changing a motor is a C9 task.

PN251

So is it fair to say then you do not know the level of skill that is required to perform various tasks in the work order?---Can you please repeat your question again?

PN252

Is it fair to say then that you do not know what classification is required to perform specific tasks in a work order?

PN253

MR BOROBOKAS: Commissioner, Mr Kakkar has already answered that question. The question seems to have been put to him a number of times and he's given an answer to that question. It seems that the answer he's given has been consistent to those questions that have been put to him in various forms.

PN254

THE COMMISSIONER: The question has been put several times and the answers have not been quite to the question. I think along the journey, Ms Presdee has firmed up on the question and I think the question is now a very precise one and I think it should be put and whatever answer he gives is the answer he gives. So put the question again, please, Ms Presdee.

PN255

MS PRESDEE: Is it fair to say, Mr Kakkar, that you do not know what classification should be applied to a particular task in a work order?---Like I've said before as well, I'm not an expert in classification, understanding, assessing, so what we and particularly I look for is a qualified tradesperson, and I only refer to Manufacturing Award, which doesn't talk about tasks, it only talks about the competency.

PN256

Mr Kakkar, a 'Yes' or 'No' is all I'm after.

PN257

THE COMMISSIONER: The question has been put and answered. You'll have to live with the question, I'm afraid.

*** VISHAL KAKKAR

XXN MS PRESDEE

PN258

MS PRESDEE: Okay.

PN259

THE COMMISSIONER: So put your next question.

PN260

MS PRESDEE: Thank you.

PN261

In relation to the people that are hired for the maintenance shutdowns, whether they're the regular maintenance or the annual shutdown, are you involved in the hiring or selection process?---No, my planning team does that process.

PN262

Do you give any direction or guidance in relation to what type of work - sorry, what level of skills or otherwise that will be required for that process?---It's the job of a planner to do that and that's what we have employed planners to do. If they're stuck and they need guidance, definitely I'm there for that support, but that's what the job of a planner is.

PN263

Okay, so it's the planners who do the hiring - sorry, it's the planners who determine who needs to be hired; is that correct?---Yes, that's correct.

PN264

Thank you. As the engineering manager, if we're dealing with someone who is one of your permanent maintenance team who is going to be absent for a period of time, are you involved in the decision-making process as to how you deal with that absence?---Yes, generally a team leader, before our restructure, escalated that process to myself, but with the restructure now, the team leader is escalating those concerns to the area manager, and then if the area manager is stuck, then the area manager escalates that to myself.

PN265

So there's an area manager layer below you?---Yes, we've just recently gone through that restructure, yes, we have hired another layer.

PN266

In terms of what level of - I'm sorry, I'll withdraw that. In terms of when someone is hired to replace - if someone is hired to replace a permanent maintenance member on a temporary basis, do you have any involvement in what classification they are paid at?---No, I don't have any involvement in what that classification looks like.

PN267

Who would be?---To the best of my knowledge, I believe we have our HR team basically employed to do that job.

*** VISHAL KAKKAR

XXN MS PRESDEE

PN268

Do you know what level those replacements are based at?---Not for every single person.

PN269

Are you aware of any of them?---Yes.

PN270

What exactly - sorry, I withdraw that. Does HR consult with you in relation to classifications for payment - sorry, I'll withdraw that question and start again. Are you consulted in relation to what classification level might be paid to a temporary replacement for a permanent employee?---Is it the - I just want a bit more clarification on this question. Is it the existing casual employees you are referring to or is it the new hiring within our team, whether it be a casual or a permanent you're referring it to?

PN271

Either?---Yes, the consultation process happens from the HR team.

PN272

So they ask you what a person should get?---Yes.

PN273

And what do you base your answer on?---I refer it back to the Manufacturing Award, schedule A and look at what's written in there, and then if it's a limited supervision, we go from what's written in there and if it's not limited and if it's standalone somebody has to perform, then we go from there. So, my reference basically is the Manufacturing Award.

PN274

But you're looking at the supervision aspect of the classification only?---I'm going through the details on what's written in there.

PN275

So you're going through the details of what's written in the Manufacturing Award?---Yes.

PN276

Okay, but - - -?---Only schedule A.

PN277

Only schedule A?---Not the whole - not the whole award.

PN278

No, no, that's fair enough - that's HR's job - but when you're looking at what - when they are asking you if you've got a view about what a person should be classified as, you are looking mainly at the - is it the level of supervision that they require, or are you looking at the level of supervision that they provide, or both?---I'm looking at the whole circumstance at that point in time, what the replacement looks like. I can give an example if you want.

*** VISHAL KAKKAR

XXN MS PRESDEE

PN279

That would be great?---Okay. So there was a tradesperson, a casual tradesperson, who's basically following what's written in a work order, the instructions, and were executing the job. When that casual was utilised in our workshop, and that workshop situation, particular situation, involved that particular casual had to do a supervision for the apprentices, then we have changed the classification from the previous classification to pay him appropriately in that particular instance for one month when the replacement happened.

PN280

So that person was classified originally at C10, but then, because they were performing supervision, they got bumped up to a C8, I think? Is that your understanding?---Yes.

PN281

Did that go through the EDC?---I can't recall at this point in time. It should be captured in the minutes if it's discussed.

PN282

You are not on the EDC, are you?---I am on the EDC.

PN283

But you can't remember whether it went through the EDC or not?---It's been a while back.

PN284

All right. No further questions, Commissioner.

PN285

THE COMMISSIONER: All right, thank you, Ms Presdee. Now, Mr Borobokas, any re-examination?

PN286

MR BOROBOKAS: No, thank you, Commissioner.

PN287

THE COMMISSIONER: Thank you, Mr Kakkar, thank you very much for giving evidence this morning. You are released and free to go, so thank you?---Thank you, Commissioner.

<THE WITNESS WITHDREW

[11.24 AM]

PN288

THE COMMISSIONER: Now, Mr Borobokas, that brings us to Ms Wilson; would that be correct?

PN289

MR BOROBOKAS: Yes, Commissioner.

*** VISHAL KAKKAR

XXN MS PRESDEE

PN290

THE COMMISSIONER: Is she joining from the same point or do we need to make another connection?

PN291

MR BOROBOKAS: I believe she is in her office and I'll just send her a text asking her to connect.

PN292

THE COMMISSIONER: Okay, thank you.

PN293

Morning, Ms Wilson, I understand you can hear me.

PN294

MS WILSON: I can, yes, thank you.

PN295

THE COMMISSIONER: All right, thank you. This is Commissioner Wilson speaking and thank you for making yourself available to give evidence this morning. In a moment, we will turn to Mr Borobokas to lead you through your evidence and then Ms Presdee from the AMWU will do the same and ask you questions in cross-examination. Before I do that, I need to administer the oath or affirmation to you. Ordinarily, we provide an opportunity for people to take an oath or affirmation, but I can't offer the oath unless you happen to have the relevant holy book next to you, so would an affirmation be acceptable to you?

PN296

MS WILSON: Yes, that'll be fine, thank you.

PN297

THE COMMISSIONER: All right.

PN298

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

PN299

MS WILSON: Sandra Wilson, (address supplied).

<SANDRA WILSON, AFFIRMED [11.28 AM]

EXAMINATION-IN-CHIEF BY MR BOROBOKAS [11.28 AM]

PN300

THE COMMISSIONER: Thank you, Ms Wilson. Now Mr Borobokas will lead you through your evidence and, as I said, Ms Presdee after him. Now if, at any stage, the connection becomes fragile, that is you can't hear anyone or you can't hear all of the question that's been put to you, then just indicate that to us and we will endeavour to put it back to you as best we can. Mr Borobokas.

*** SANDRA WILSON

XN MR BOROBOKAS

PN301

MR BOROBOKAS: Thank you, Commissioner.

PN302

Good morning, Ms Wilson. Ms Wilson, have you made a statement in relation to these proceedings?---Yes, I have.

PN303

Do you have that statement in front of you?---I do.

PN304

Is it titled 'Witness Statement of Sandra Wilson'?---Yes, it is.

PN305

Does that statement before you contain 31 paragraphs?---Yes, it does.

PN306

Is there anything in your statement you wish to amend?---No, there isn't.

PN307

Thank you, Ms Wilson. Commissioner, I wish to tender the statement of Ms Sandra Wilson into evidence.

PN308

THE COMMISSIONER: All right, thank you. The witness statement of Sandra Wilson will be exhibit R2.

EXHIBIT #R2 WITNESS STATEMENT OF SANDRA WILSON

PN309

Are there any further questions, Mr Borobokas?

PN310

MR BOROBOKAS: No, thank you, Commissioner.

PN311

THE COMMISSIONER: All right, thank you. I will turn to Ms Presdee to commence the cross-examination, thank you.

PN312

MS PRESDEE: Thank you, Commissioner.

CROSS-EXAMINATION BY MS PRESDEE

[11.30 AM]

PN313

Ms Wilson, is this a good volume for you? Can you hear me?---Yes, I can hear you clearly.

PN314

Thank you. Ms Wilson, you've been at Simplot for nine and a-half, nearly 10 years, 10 years this year; that's correct?---Yes, that's correct.

*** SANDRA WILSON

XXN MS PRESDEE

PN315

Were you involved in the classification processes of maintenance personnel like Mr Gale and Mr Edwards that resulted in their current classifications?---I wasn't involved in the early process. It was certainly implemented before my time. I believe Darren Gale was reclassified in 2015, so, yes, I was here then, but Mr Edwards was classified in 2004, I believe, so I wasn't there then.

PN316

In relation to - this is testing your memory and if you can't remember, that's perfectly fine - in relation to Mr Gale's classification in 2015, do you know what year the job description was based on?---No, I can't answer that question, sorry.

PN317

That's all right. It would be amazing if you could. Do you have a copy of a statement that's been given by Mr Edwards with you, or do you have access to that?---I would have. The initial statement or the submission in reply? What am I
- - -

PN318

I'm looking at the initial statement and I would like to take you to page 73 of the court book, which is attachment GE1?---I apologise, I'm clearly not as prepared as I should be because there was some issue with getting the court book originally, but I do have a copy of the statement of Gary Edwards if I can just refer to that?

PN319

That's fine. It's more in terms of identifying for the purposes of the transcript. Commissioner and Mr Borobokas, if they are using the court book, I would like to go to page 73 onwards, and also just checking, Ms Wilson, do you also have - if you have a copy of the document which is headed 'Maintenance Fitter'? It's a table with six columns on it, a number of headings: 'Area Leader', 'Specific Work', 'Additional Appointed Roles', going on. You have that attachment and that is, I think, a three-page document, and then there is another document which is attached to Mr Edwards' first statement, which is a job description, maintenance fitter. Do you have those two documents?---My apologies, I don't. Can I seek some assistance in making sure that I have the correct documentation in front of me?

PN320

I have no objection to that.

PN321

THE WITNESS: Paul, is that something - because I know we had some issue getting the court book through originally - is that something I should now have access to? My apologies.

PN322

THE COMMISSIONER: It's not necessarily the case that you should, Ms Wilson. It's really a matter of what you do have in front of you. You said that you had the statement of Mr Edwards?---Yes, that I have.

*** SANDRA WILSON

XXN MS PRESDEE

PN323

Do you have the attachments to that? There were two?---No, I don't appear to have the attachments.

PN324

All right. Ms Presdee, what I suggest we do, depending on your views, is to stand the matter down for five or 10 minutes to allow Ms Wilson to print out the relevant document.

PN325

MS PRESDEE: I am happy to go with that course of action, Commissioner.

PN326

THE COMMISSIONER: All right. Can I just double-check, in terms of your questioning - it's already about Mr Edwards and his first statement, which has two attachments - are there other statements or other documents you want to be putting to this witness as well?

PN327

MS PRESDEE: No.

PN328

THE COMMISSIONER: All right.

PN329

Ms Wilson, this isn't a trick question or anything like that, but do you have a copy of the hearing book in your email anywhere, or do you have access to it?---I haven't seen it come through, so I don't - - -

PN330

All right. Can I request Mr Borobokas to maybe send you a copy of the relevant statement, at least, with the attachments so that you can then print that out?---That would be fantastic, thank you.

PN331

All right. What we will do is adjourn the proceedings and then, once you have those documents, if you can let Mr Borobokas know and we'll then resume the hearing?---Thank you.

PN332

All right, thank you.

<THE WITNESS WITHDREW [11.36 AM]

SHORT ADJOURNMENT [11.36 AM]

RESUMED [11.40 AM]

<SANDRA WILSON, RECALLED [11.40 AM]

*** SANDRA WILSON

XXN MS PRESDEE

CROSS-EXAMINATION BY MS PRESDEE, CONTINUING [11.41 AM]

PN333

THE COMMISSIONER: Good morning again, parties.

PN334

Ms Wilson, can I just confirm that you have the document that we have been referring to?---Yes, I do now, thank you.

PN335

Could you just please describe it for the benefit of myself and Ms Presdee?---The attachment that Ms Presdee has sent through is page 75 at the top and there are headings underneath that say, 'Maintenance Fitter' and 'Core Maintenance Trade Work.'

PN336

And is there then a job description at page 76 and 77?---Yes, that's correct.

PN337

All right, thank you. In that case, I will allow the questioning to be resumed and turn back to Ms Presdee.

PN338

MS PRESDEE: Thank you, Commissioner.

PN339

Ms Wilson, when you go to what is the attachments to Mr Edwards' first statement, which is exhibit 3, pages 73 to 75 of the court book are tables outlining various tasks under a number of headings, such as 'Maintenance Fitter', 'Area Leader', 'Specific Work', 'Additional Appointed Roles', 'Area Maintainer Specific Work', 'Core Maintenance Trade Work' and there are a number of tasks outlined under each of those headings. Do you know who prepared those lists of tasks?---Not categorically. I can make an educated guess that it was our previous maintenance manager, Malcolm Hurley, who commenced this work and I know that he put this information up so that it could be seen by the tradespeople that work in the maintenance team so that they could add, take, whatever in an attempt to get a comprehensive task list for these roles.

PN340

Is this a finalised document?---I am not aware of it being a finalised document.

PN341

In relation to the table where you have columns such as 'Competency Number' and 'Competency Description', do you know what that refers to or what that would refer to?---Well, likely, if we were following the process in the - I'm just looking for the document - but implementing the competency standards is, I believe, like a five-step process, so you would first determine the tasks and then you need to determine the competencies that attach to those tasks. So, it looks like this was a partially completed process.

SANDRA WILSON

XXN MS PRESDEE

PN342

So there is nothing there that actually lists what the competency is? Looking at, for example, under, on page 75, 'Core Maintenance Trade Work' - - -?---Yes.

PN343

- - - where you have item number 1, 'Maintain Pneumatic Systems' is the task description, the work example is:

PN344

Investigate faults in pneumatic systems, diagnose issues, repair and/or replace pneumatic components.

PN345

There is nothing under 'Relevant Work Area'?---No, there isn't.

PN346

Or 'Competency Number' or 'Competency Description', but would it be fair to say that the competency number and the competency description would be referred to a recognised training package or similar?---If this were a completed document, yes, that's what I would expect to see, but I don't know even if the tasks is an accurate finalised list or whether it's - sorry, I'm answering more than your question.

PN347

No, that's all right. You did say earlier it doesn't look to be finalised. When a casual worker is engaged to perform maintenance work, do you have any reference at all to a document like this before they are classified?---No, I don't.

PN348

Do you determine that they are classified as a C10?---Yes, I - yes.

PN349

You were a bit hesitant?---Only in that when we engage a new casual, what we are looking for is a maintenance tradesperson, so, yes, they are brought in as a C10.

PN350

But you don't actually assess their own skills, you just ask if they meet the necessary standard for a C10, i.e. a qualified tradesperson, therefore they get paid a C10?---That's correct at the recruitment stage, yes.

*** SANDRA WILSON

XXN MS PRESDEE

PN351

At the recruitment stage. Other than the checking of qualifications, there is no initial classification based on the work that they may be required to perform? That's what you are telling me?---I suppose the best I can tell you is that that assessment would have been done some time ago and it is standard practice to bring a casual in at C10 based on the requirements that we expect them to fulfil, particularly in relation to, say, maintenance and shutdowns, which is what they are usually brought in for, at least in the early stages, so I suppose it's based on that level of work and that level of supervision that it has been determined, probably

some years ago, that that level of work would be a C10 and we have followed that practice.

PN352

So you're telling me that you're following a practice, not necessarily a classification process?---Yes, that's correct.

PN353

If you bring in a casual to replace a permanent employee, what process do you follow for classifying that worker?---We don't reclassify them. Once somebody is employed, there's a process in appendix 7 if they wish to have competencies assessed, if they're looking for recognition of prior learning or they're seeking a reclassification, which is the process that, say, for example, Darren Gale - when you referred earlier to, say, Darren Gale and Gary Edwards' initial classification, they were C10s, they applied through a process and were reclassified.

PN354

But if you brought someone in as a casual to fill a four-week replacement for a member of the permanent workforce who is on some form of leave, for example, whether they're a new hire or on your list of preferred casuals, you would just say that's a C10, they don't need to - if they wanted to be reclassified, they would have to go through the process? Is that what - - -?---That's correct.

PN355

That's correct? Ms Wilson, how long does a reclassification process take?---I couldn't tell you categorically. It is a cumbersome process.

PN356

So is it realistic that a person who is going to be engaged for four weeks starts a classification process that is not likely to be finished by the time their temporary work is over?---I'm not sure it's for me to determine whether it's realistic. It is the process that we have in our enterprise agreement.

PN357

THE COMMISSIONER: Can I just understand this aspect of your evidence, Ms Wilson. Are you saying that - and I want to talk first of all about casual employees - are you saying that the first time a casual employee is engaged by you then, if they are replacing a permanent staff member, whether it's for a short time or a longer time, then you would classify them as C10?---Yes, they retain their C10 classification.

PN358

Having classified them as C10, then they would never be reclassified above C10; is that correct?---There is a process by which they could apply for reclassification.

PN359

Which is the one set out in the enterprise agreement?---That's correct.

*** SANDRA WILSON

XXN MS PRESDEE

PN360

And coming to the question which Ms Presdee put to you a moment ago, is it realistic that such a person could go through that if they were only engaged for four weeks?---I don't mean to answer a question with a question, but is the suggestion that they should be reclassified for a four-week period and then go back to C10 because - - -

PN361

No, the question - - -?--- - - - if you're expecting somebody - - -

PN362

The question pertains to your evidence, which is that your evidence, as I understand, is they come in as C10; right?---Yes.

PN363

And that the only way that they would then be classified above that is if they go through the process set out in appendix 7; right?---That's correct.

PN364

Is it realistic that a person who is engaged for four weeks could do that?---I guess my short answer is, yes, it's as realistic as it is for any other casual because if they put an application in and it is demonstrated that they hold and use additional competencies that would require a reclassification, that is actually backdated to the time that they have applied or been assessed.

PN365

Could you complete that work within the four-week period?---No, and I don't personally - - -

PN366

How long would it take?---I don't - - -

PN367

How long would you, in the corporate sense, take?---Well, we generally need to bring in third party people to do that assessment.

PN368

And how long would that assessment take, in your experience?---Possibly months, and it hasn't happened for some years because nobody has applied for a reclassification.

PN369

All right. Thank you. I will now turn back to you, Ms Presdee.

PN370

MS PRESDEE: Thank you, Commissioner.

PN371

Ms Wilson, are you aware of an instance where a casual maintenance employee was employed to cover another maintenance position that involved the supervision of apprentices and was classified as a C8?---Yes, I am aware of that.

*** SANDRA WILSON

XXN MS PRESDEE

PN372

Did that go through the EDC process?---No, it didn't.

PN373

Thank you, no further questions.

PN374

THE COMMISSIONER: Thank you, Ms Presdee. Now, Mr Borobokas, is there any re-examination? Mr Borobokas, are you there at the moment.

PN375

MR BOROBOKAS: Yes, I'm sorry, Commissioner.

PN376

THE COMMISSIONER: You are. Good. That's okay, thank you.

PN377

MR BOROBOKAS: Sorry, Commissioner, I was just trying to decipher a note that I wrote. Commissioner, I don't have any questions for Ms Wilson, thank you.

PN378

THE COMMISSIONER: All right, thank you, Ms Wilson, for giving evidence this morning. That's appreciated and you are now released as a witness and free to leave?---Thank you.

PN379

All right, thank you.

<THE WITNESS WITHDREW

[11.58 AM]

PN380

THE COMMISSIONER: Now we turn to the matter of submissions. Ms Presdee, what I will do, first of all, is mark your two documents. The initial outline of submissions, which was on 10 February, I will mark as exhibit A5.

PN381

MS PRESDEE: Sorry, Commissioner, I don't mean to step in here, but I don't think we have marked Mr Tuit's evidence.

PN382

THE COMMISSIONER: We haven't either, have we. All right, I will take that back. We will mark Mr Tuit's evidence as exhibit R3.

EXHIBIT #R3 WITNESS STATEMENT OF BRYAN TUIT

PN383

Then, coming back to your outline of submissions from 10 February, as I indicated, that will be marked as exhibit A5.

*** SANDRA WILSON

XXN MS PRESDEE

**EXHIBIT #A5 OUTLINE OF SUBMISSIONS OF APPLICANT
DATED 10/02/2023**

PN384

And then the applicant's outline of submissions in reply from 10 March will be exhibit A6.

**EXHIBIT #A6 OUTLINE OF SUBMISSIONS OF APPLICANT IN
REPLY DATED 10/03/2023**

PN385

Do you wish to speak to those submissions, Ms Presdee?

PN386

MS PRESDEE: I would only just like to highlight, Commissioner, just in relation to the evidence that has been brought forward in oral evidence today rather than go back through what is contained in the submissions, if that's an acceptable course for the Commission. Of course, we rely on the matters raised in those submissions.

PN387

THE COMMISSIONER: That's perfectly acceptable to me. It's really a matter for you, I guess, how you wish to proceed, but I am content for you really to speak to the issues that may have come up in evidence this morning.

PN388

MS PRESDEE: Yes, okay, thank you, Commissioner. As was noted this morning when the hearing commenced, realistically, the parties are agreed that there is nothing in the enterprise agreement that requires a casual maintenance worker to be classified as a C10. I think Ms Wilson actually indicated it was a long-standing practice that, somehow, basically, if you have a trade qualification, you're a C10 and that if you wanted to change that, you must go through a particular process.

PN389

Now, as certainly Mr Gale, from his own experience indicated, a reclassification process is not a quick process; it takes a long time. Mr Gale thought it was probably about two years for his reclassification process from a C10 and, at that time, he was an existing permanent employee, and he was also being assessed on the work that he was actually performing.

PN390

Unfortunately, we don't know what that job description was. It is, I would actually say, not relevant for the Commission today, but he was assessed against job descriptions and what he was actually performing.

PN391

In relation to a casual employee, they are assessed on the basis of a trade qualification and that is it. The process for what work they perform is largely not looked at at all, and in the rare instance that a casual is required to officially

supervise people on a longer basis than just coming in to perform a shutdown, they were reclassified to C8 without going through the formal process.

PN392

Mr Kakkar was alerted to the fact that a casual was required to supervise apprentices and Ms Wilson confirmed that the C8 classification was given without going through the EDC, which suggests that there is a process that is set out of reclassification, but there doesn't even seem to be a process of initial classification that goes beyond, 'Does this person hold a basic trade certificate?'

PN393

Mr Gale and Mr Edwards are both classified above the C10 level as area fitters, but only a certain portion of their role is supervision. The AMWU is not going to say that every casual employee will be supervising, but we would also submit that supervision is just one aspect of a classification. It's the work that is being performed and the level of competency and the competencies that are displayed by a tradesperson in dealing with different machines.

PN394

Now it's all very well to say that someone at a C10 level can assemble and disassemble a machine, but, as Mr Edwards said, when he's dealing with a pneumatic machine, the work he is performing is at a higher classification level because it requires more skills.

PN395

What the AMWU believes is that there's a process that's there that is exercised by Simplot when it so pleases them, that is, if they think the work needs to be done at a higher level, they will reclassify, they won't necessarily go through the formal process because it takes too long and, if you are a casual employee, there is no guarantee that you are actually going to be still working at the time the classification process is finalised. You may be back paid if you are performing a four-week contract, you may be back paid, but that also presumes that you are still in an employment relationship with Simplot to see the process through.

PN396

THE COMMISSIONER: I don't have a problem with that submission, Ms Presdee, other than the fact that, ultimately, that's not what I have to determine.

PN397

MS PRESDEE: True.

PN398

THE COMMISSIONER: What I have to determine is what the enterprise agreement says. Now, if the enterprise agreement says that's what you do, then, good, bad or ugly, that's what you do.

PN399

MS PRESDEE: That is true, but I think we can certainly say that there doesn't appear to be any initial classification at all in relation to the work that's being performed for these workers.

PN400

There are significant issues with the process, including what you assess them against, and the reality is, and is noted in Simplot's submissions, that it's not just the - and it is correct that the enterprise agreement says it's not just the skill level that someone has, it's the needs of the business.

PN401

I would encourage the Commission to find that the needs of the business are actually the work that is required to be performed, but part of the problem is that there's no real understanding of the nature of the work that is to be performed.

PN402

There needs to be an absolute process, an actual process going forward with the EDC that actually properly documents and continues the work that's being performed to ensure that there is actually an initial classification process that is done which goes beyond, 'Show me your trade papers', which appears to be the standard that we are looking at, and, even though Mr Kakkar said in his evidence that he's looking for highly skilled tradesmen, that's not necessarily what is being looked at when tradesmen are engaged, it is merely, 'Do you have a Cert III or equivalent?'

PN403

The key issue that we also have with this, with the payment of casual employees, particularly those who are covering a permanent employee who is rated at the C6 to C8 classification, is that those workers are performing work at a particular level, obviously, because it's not just the skill, it is also the needs of the business, and they are performing the range of work that requires a higher than C10 level.

PN404

I do not know how you can properly justify paying one area fitter a C8 level and, when you ask someone to perform exactly the same work that they are doing when that C8 is absent, to not pay them at a C8 level.

PN405

What is actually happening here is a misapplication of the classification process that's contained in the award or the enterprise agreement. That is what is recognised, it was what was recognised by Gostencnik DP as well in the case which, unfortunately, I have not scribbled down.

PN406

THE COMMISSIONER: I'm sorry, you just broke out when you mentioned what the case was. I'm sorry, which case is that?

PN407

MS PRESDEE: I'm sorry, I'm actually trying to find my note which actually says what it is.

PN408

THE COMMISSIONER: All right.

PN409

MS PRESDEE: I have quoted it in my submissions. I think it is actually the Modern Awards decision.

PN410

THE COMMISSIONER: Okay.

PN411

MS PRESDEE: I apologise, Commissioner. I apologise, Commissioner, I will undertake to give you the correct case reference.

PN412

THE COMMISSIONER: Do you happen to know the paragraph you are referring to of your submissions?

PN413

MS PRESDEE: No, that's - - -

PN414

THE COMMISSIONER: I think it's footnote [17].

PN415

MS PRESDEE: Yes.

PN416

THE COMMISSIONER: The Four-Yearly Review of Modern Awards; would that be correct?

PN417

MS PRESDEE: Yes, that would be the reference, yes, thank you, Commissioner.

PN418

THE COMMISSIONER: All right.

PN419

MS PRESDEE: That's something I often do when I go off book. Thank you, Commissioner. So, as the Deputy President did say in the Modern Awards decision, classifications are not just purely what the award says, it's got to do with the work that's being performed, and the work that is being performed is not necessarily a C10 level.

PN420

Realistically, the AMWU's position is not that everyone necessarily gets paid at C6 or C7 or C8. We would like that, but we know that that's not going to happen, nor should it happen if the people do not have the skills to justify that or if the people are not performing work that justifies payment at that classification, but our difficulty is that there does not seem to be any recognition whatsoever in terms of either the skill that is being required or the work being performed at any point when this work is being performed, and the difficulty that we have is that if you are engaging a casual employee, particularly with the replacement of permanent employees on a temporary basis, if you are engaging a casual employee, you have, or you should have, a job classification that you can assess

them against, you should have a skill qualification that they possess and you can marry up the two.

PN421

That is not necessarily a reclassification process. This is you are engaging a casual employee who you have engaged before as a C10, but they are not necessarily going to - you're not engaging them for the same work, you're engaging them for different work.

PN422

So, Commissioner, we acknowledge that there is a process that is quite cumbersome for reclassification, and it's cumbersome because it's thorough and it's cumbersome because it refers back to competencies, which is what a good classification system should do, but that only works if you are actually applying competencies based on the work being performed, not solely on, 'I need a tradesman, a tradesman must be paid at C10.'

PN423

It is our argument that Simplot are not actually applying systems that are in place by that initially for those who are engaged in regular maintenance, and certainly not regularly for those who are engaged to fill in for permanent maintenance employees, and so it's our submission that, first of all, the process that needs to be followed is an accurate, or as close as possible to accurate, initial classification and then, perhaps, a relevant review of work being performed by maintenance employees being done en masse so that the next casual that's hired is not necessarily just going to be given a C10, they actually get paid the level commensurate with the work that Simplot expects them to perform.

PN424

Now, that may require a hell of a lot more work in terms of finalising job descriptions, and we are happy to work with Simplot on that, but something actually needs to be done because people are expected to perform work at a level for which they are not being paid, and that is the AMWU's position, thank you.

PN425

THE COMMISSIONER: Thank you, Ms Presdee, that's comprehensive, so thank you.

PN426

Now, Mr Borobokas, I should note your materials as well. I think the only outstanding document is the respondent's submissions, which I will mark as exhibit R4.

EXHIBIT #R4 SUBMISSIONS OF THE RESPONDENT

PN427

MR BOROBOKAS: Thank you.

PN428

THE COMMISSIONER: Do you wish to speak to those submissions?

PN429

MR BOROBOKAS: Yes, thank you, Commissioner.

PN430

Commissioner, in the submissions and, indeed, in the statement of Ms Sandra Wilson, there's an outline about how we recruit casuals, and casuals are recruited on the basis of the needs of the business and they are engaged accordingly and the assessment that the business makes is that it requires, on shuts generally, to have C10 casuals that perform work that, we submit, is duties that fall within the descriptions in appendix 7 of the Manufacturing Award that Mr Kakkar outlined.

PN431

There seems to be a number of terms thrown around, you know, without any real accuracy. For example, Commissioner, the EDC is not a mechanism in the enterprise agreement by which Simplot and the union employees who voted the agreement agreed should be the process when it comes to recruiting maintenance (audio malfunction) in that respect and classifications as well.

PN432

The EDC is a review process and we have outlined the history of how the EDC came about in the submissions that I don't intend to traverse over those, but I will try and say it in a sentence, and that is that, a while ago, the AMWU and Simplot agreed to have a competency-based classification system and that requires assessment of an existing employee's classification - competency rather - when it comes to reviewing, but it was never intended for that to be what we applied.

PN433

The EDC is what we applied when we recruited someone, and so when Simplot recruits someone, they will recruit - in the case of a permanent, they might need a C8 or a C7 or C6 and they will advertise for the position and they will recruit that position. Now, when that person is engaged and they are working, they can apply for a classification review, and that's what this EDC mechanism is about. The EDC mechanism is not about what you do when you recruit someone from the beginning.

PN434

It shows the complexity of this issue, I think, having listened to the witnesses, both the union's witnesses and Simplot's witnesses, about exactly what the classification of an employee should be, and that's the very reason why we have an EDC mechanism in the agreement, is because it removes the opinion, which, in the submissions of the AMWU, we should rely upon the opinions of Mr Gale and Mr Edwards when it comes to evaluating what a casual should be classified as. It avoids all that because that just leads to, probably, unfairness, inaccuracies, and it also leads to uncertainty, and that's the very reason why there's a mechanism that spells out the classification review process in the agreement.

PN435

Commissioner, the purported grievance that has led the AMWU to bring a dispute here is the engagement of casuals, as you heard, generally paid and classified at the C10 level on the basis of, as the respondent believes, is a business needs, and I should add that that classification aligns to the classifications in the agreement.

PN436

As noted in our written submissions, it doesn't appear to be a dispute that really ought to be arbitrated by the Commission. This issue shouldn't be before the Commission because - well, I won't traverse over the written submissions, except to say that there is really no term of the agreement which is in dispute or requiring interpretation really. There's no ambiguity or uncertainty been put before us here, rather the AMWU is requesting the Fair Work Commission to effectively rewrite the agreement or impose newly-created terms upon Simplot regarding the classification of casuals.

PN437

The real matter here is the matter that's being arbitrated - the matter that the Fair Work Commission is being asked to arbitrate here is the two questions at hand, not about any particular case involving a specific casual employed by the respondent. In fact, there's no evidence, Commissioner, that is - what we have heard is about some casuals who are purported to perform activities during a shut that, in the views or in the opinion of the delegates, should be at a higher level, but haven't articulated or provided any evidence as to why.

PN438

On the second question, therefore, there are differing views, Commissioner. Looking at the applicant's submissions, the applicant submits in their submissions that when it comes to the classification of casual maintenance employees, there's two proposals that are proffered based on different scenarios, and I am looking at paragraph 6 of their submission to the Commission, that, firstly, when a casual is being called to cover an absent worker, the casual should be paid at the C8 level because that's the lowest level paid for a maintenance employee, and the second proposal is for casuals who work during the regular maintenance shutdown periods, Simplot should immediately apply the principles contained in appendix 7 in consultation with the relevant area fitter to determine the appropriate classification for the work being performed having regard to the area fitter's work allocation practices. That's how they answer - that's how my friend from the AMWU answers the second question.

PN439

Both of these approaches we say, Commissioner, are highly problematic. They are highly problematic for the following reasons, I think. In the case of the first proposal, it requires the respondent to ignore the terms of the agreement, in particular appendix 7, and its approach to competency-based classification. The submissions of the AMWU seek to bypass the classification arrangements established in the agreement, which, amongst other things, is based on the demonstrated competency the employee holds and, again I should add, is required to use.

PN440

There is no explanation in the AMWU's submission of what it means to cover an absent worker (indistinct) explanation been provided. Does it mean doing the exact same job on the day irrespective if higher competency levels are required, such as supervision and safety competencies? The AMWU's submission assumes a like for like replacement is possible or occurs in every situation, which it won't probably be in most cases, Commissioner, because often the case will be when a

C7 is absent, for example, Simplot may only require a maintenance worker to perform some rudimentary, to use the example I did before, assembly and disassembly of plant and equipment and not the whole range of activities that were performed by the absent C7, such as, you know, supervising teams and their safety responsibilities for the team.

PN441

The like for like replacement, you know, it will lead to unfairness for Simplot because it would never be just engage someone to pick up some rudimentary maintenance duties and paying and classified accordingly. I don't know whether that mechanism - I'm certain that mechanism just simply can't work, that proposal just simply can't work.

PN442

In the case of the second proposal to the second question, the AMWU suggests only the principles outlined in appendix 7 should be applied by the respondent, along with some consultation with the relevant area manager. It seems to suggest again we leave out the procedures of appendix 7, (indistinct) the review process in the EDC. That would mean that the parties should ignore parts of the agreement, which I don't think is appropriate.

PN443

The other point, Commissioner - I won't take too long - is the AMWU's proposal seems to give Simplot a hall pass to subjectively determine the competencies that could be required to perform the maintenance duties, and what I mean by that is, if you read carefully at paragraph 6 exactly what the AMWU is proposing be installed is that the casual employees to work, and I'm just reading it directly here again, that casual employees who work during the regular maintenance shutdown period, the respondent, that is Simplot, should immediately apply the principles contained in appendix 7. It doesn't really spell out what those principles are. However, I should say that they are probably assessments are made, the classification assessments are made on a classification basis and that they are required to be used by the employer.

PN444

So, apply the principles contained in appendix 7 in consultation with the area fitters, so consultation is engaging with them and trying to understand their view to determine the appropriate classifications for work to be performed by the directly employed casual employees having regard to the area fitter's existing work allocation practices. It seems to be a hall pass to Simplot to, to some extent, subjectively determine competencies that could be required to perform the maintenance. I am not entirely sure that my friends have understood what they are trying to grant us.

PN445

We say that the appropriate methodology in reviewing a classification for a casual employee is through the EDC, and there is a number of ways that it could be done. It could be done considering a cohort of casuals, it could be done by an individual casual. You know, the process, even though that is probably, you know, is probably not as simplified as it could be, and the original authors of that were Simplot and the AMWU many years ago, who probably thought they were

doing a good thing by having a very highly regulated and recommended classification review process, but, even though it would probably take longer than what both parties would like the process undertaken, nevertheless, it is a process that can be undertaken and the EDC - and the union can bring this matter to the EDC and say, 'Can we do something here with casuals, can we have a review of the classification process?' Such an approach was never undertaken. It should have been the first port of call.

PN446

Commissioner, at paragraph 20 of the applicant's written submission, the AMWU gives somewhat of a description as to the principles that they referred to in paragraph 6. They note - I will read out paragraph 20:

PN447

A worker's classification level should be based on the nature of duties that are required to be performed by the employer, not solely the qualifications held by the employee.

PN448

On face value, we take that to mean that we shouldn't take into consideration qualifications, that we are entitled to ignore a qualification when it comes to the classifying of a worker at a lower level, for example, or at a higher level.

PN449

The paragraph goes on to say:

PN450

The principle is enshrined in the principles of a competency-based classification -

PN451

in appendix 7 of the agreement, that is, which states:

PN452

New employees will be classified in accordance with the relevant competencies held and used as a requirement of their position.

PN453

So, the relevant competencies held are those which become recognised - are the ones that are required by the employer and then a review of that - and a review of those competency levels are the ones that are recognised once they go through the EDC process.

PN454

I don't think it's in both parties' interests here, especially the employees' interests, to introduce a subjective evaluation criteria or ability to have a subjective evaluation of casuals. Appendix 7 mandates that the classification is made on the basis of the employees' assessed competencies through the EDC pursuant to the - and this is where a bit of complexity comes into it - the National Metal and Engineering Industry Competency Standards Implementation Guide. Outside of a

proper recognised process, Commissioner, particularly one that has subjectivity to it, will just lead to uncertainty and disputation.

PN455

Simplot submits that the only answer to the second question can be that the classification should be at the appropriate level - I'll start again. Simplot submits that the only answer to the second question can be at the appropriate classification level according to the terms of the agreement, that is all of the terms. That is precisely what should be determined here, Commissioner, and held here, is that the terms of the agreement need to apply, borrowing the expression from yourself earlier, 'good, bad or ugly', I think it was. They are the set of arrangements that are in the agreement.

PN456

Commissioner, those arrangements are articulated in Ms Wilson's statement. I won't traverse over them, but they are provided there in detail and I think Ms Wilson's evidence is perhaps the gold standard evidence answering the question and explaining the process involved, so I won't traverse over those steps. They are eloquently outlined in paragraphs 8 to 21 of Ms Wilson's statement, but also explained further in the respondent's submissions.

PN457

I will note, however, that the evidence provided by Ms Wilson - and Mr Gale demonstrates that the Ulverstone site Employee Development Committee outlined in the agreement has responsibility for undertaking the classification review works successfully, and you will note in Ms Wilson's evidence that I think the union holds half of those positions, half of the positions on that committee, so the question has to be asked why wasn't this matter taken to the EDC first? It is the evidence of Mr Gale and Mr Edwards that the EDC on which they sit is the mechanism the parties should follow when it comes to classification review.

PN458

Conversely, the AMWU suggests that the answer to question 2 is to ignore the content in the agreement related to competency assessment and evaluation process.

PN459

I will try and conclude here, Commissioner, by saying that the union's proposal is highly problematic because it suggests a number of things, that a determination can be made subjectively that perhaps qualifications aren't that relevant and, you know, Simplot should be anointed to determine the levels based on some consultation.

PN460

I think, if it is allowed, it will lead to serious problems and unfairness, such as the same work being classified differently by respective area managers. I think that the views will vary significantly. We heard the evidence of Mr Edwards about a C10 and a C7 and a C8 and a fourth year apprentice doing assembly and disassembly work. I think we will end up with an untenable situation where casuals performing the same work would be classified differently based on opinion and I think it will lead to uncertainty and ambiguity.

PN461

The procedures regarding reclassification have been agreed by the employer and employees through the bargaining process and the AMWU do not argue against the legitimacy, and rightly so. These terms in the agreement, I think they have to stick.

PN462

Nor is what the AMWU seeks necessary for the efficacy of the agreement's classification and training terms. Certainly there's some frustration there around how difficult - how long it might take to review somebody, and that might be because of the way that the EDC operates administratively and maybe everyone's a bit slow and they're all a bit busy.

PN463

Commissioner, I will finish on this note, that clause 18 of the agreement sets out the terms for the review of appendix 7. It is pointed out in the evidence statement of Ms Wilson that pursuant to clause 18 - clause 18 of the agreement provides a mechanism by which - provides a requirement that the parties meet to review appendix 7 for this and other reasons as well. That is a bit long in the tooth and it needs a review. It seems to be, you know, a first testament version of how to classify - how to reclassify someone and how to train someone.

PN464

We submit that the procedure pursuant to clause 18 is the appropriate mechanism, it is the right - it is the provision that was - a term that was agreed to in the last bargaining and approved by the employees and set out in the agreement and it should be allowed to do its job, which we submit (indistinct) well in an advanced stage between the AMWU and Simplot.

PN465

I will leave the submissions there, thank you, Commissioner, unless you have got any questions?

PN466

THE COMMISSIONER: No, I don't, thank you, Mr Borobokas, that's appreciated, the submissions. Now, Ms Presdee, any reply?

PN467

MS PRESDEE: Thank you, Commissioner. I just wanted to clarify, I think, in relation to some of the outcomes, I suppose, which were suggested by Mr Borobokas if what was highlighted at paragraph 6 of our submissions were followed through.

PN468

Firstly, the key thing in relation to the classification of any job requires some understanding, and not actually just understanding but also some actual tabulation of what work is being performed by a particular employee. You can't - we are not saying that qualification level should be ignored. It should always be dealt with in conjunction with what competencies that person holds and uses, and the only way you can demonstrate what competencies are being used is if you actually know what the job is required, and so that, in consultation with area fitters, to determine

the appropriate classifications for work being performed, work being performed by the directly employed casuals having regard to the area fitters' existing work allocation practices.

PN469

What are these casuals actually being required to do? What does Simplot actually require these casuals - what work do they require them to perform? I am rather concerned that the interpretation of the work required of the business is work at C10 level if workers are not actually working at C10 level, they are being asked to perform work that should actually be classified at a higher level.

PN470

The process that we put forward was to actually sort of say - was to actually take into account the work that casuals are performing, not just, 'Oh, disassembling and assembling, that's work that C10s do, even apprentices can do it.' That is not the be all and end all. I can assemble and disassemble a child's toy. That doesn't give me a trade qualification. I could assemble and disassemble a child's toy that involves electronics and batteries. It may take a higher level of skill to do so.

PN471

Assembling and disassembling, the level of skill and competencies required depends not on the ability to assemble and disassemble but on what you actually apply the assembling and disassembling to, and that is something, Commissioner, that I would like the Commission to have regard to, that is that it is too simple to actually take a line out of a job description and say, 'Oh, well, C10s have to be able to do that, therefore everyone is a C10.'

PN472

It is not necessarily subjective to say, 'This work is actually at the C8 level' because there are standards that have been put in place that have been agreed to by unions and industry and training organisations to demonstrate what competencies are required, what skill levels are required and how they should be recognised for various aspects of tasks that are being performed.

PN473

While I understand the submission that was made by Mr Borobokas in relation to if a permanent maintenance worker is being replaced for one day, they may not be fulfilling the full range of tasks that the permanent worker is actually required to do - I accept that - but one would expect that if a casual worker is being engaged to fulfil the duties of a particular worker for a week and certainly four weeks, or even longer, that they would be required to apply the full range of work that is being expected to be performed. If you are requiring a casual to be shift fitter, for example, if they are performing the work of a shift fitter, then one would wonder why they are not being paid at a C6, C7 or C8 level if they are performing those tasks.

PN474

Commissioner, I think the AMWU's position is that the principles have regard to work being performed, skill and competency and qualifications, and it's the interaction of the two, it is not one or the other, and when we are looking at what are the needs of the business, it is not necessarily just the needs of the business is,

'What we want to pay?', the needs of the business is, 'What do we want done, what do we need done by these workers?' and that is not necessarily just at C10, it might be at other levels that are contained in the agreement and, as such, that should be recognised through an initial classification process as well as an ongoing reclassification exercise.

PN475

Thank you.

PN476

THE COMMISSIONER: All right, thank you, Ms Presdee, that's appreciated.

PN477

Now, parties, I gather that's the end of the hearing today, that there's no further matters to be taken account of and, on that basis, I will reserve my decision and obviously consider all of the material that has been provided to me by you and the witnesses and I will reduce my reasons to writing and publish them to you in due course.

PN478

Thank you for your attendance this morning.

ADJOURNED INDEFINITELY

[12.46 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

DARREN JOHN GALE, AFFIRMED	PN28
EXAMINATION-IN-CHIEF BY MS PRESDEE	PN28
EXHIBIT #A1 WITNESS STATEMENT OF DARREN JOHN GALE DATED 09/02/2023.....	PN34
EXHIBIT #A2 WITNESS STATEMENT IN REPLY OF DARREN JOHN GALE DATED 10/03/2023	PN39
CROSS-EXAMINATION BY MR BOROBOKAS.....	PN43
THE WITNESS WITHDREW	PN67
DARREN JOHN GALE, RECALLED.....	PN80
CROSS-EXAMINATION BY MR BOROBOKAS, CONTINUING	PN80
RE-EXAMINATION BY MS PRESDEE.....	PN89
THE WITNESS WITHDREW	PN102
GARY EDWARDS, AFFIRMED	PN113
EXAMINATION-IN-CHIEF BY MS PRESDEE	PN113
EXHIBIT #A3 WITNESS STATEMENT OF GARY EDWARDS DATED 10/02/2023	PN121
EXHIBIT #A4 WITNESS STATEMENT IN REPLY OF GARY EDWARDS DATED 10/03/2023.....	PN126
CROSS-EXAMINATION BY MR BOROBOKAS.....	PN129
RE-EXAMINATION BY MS PRESDEE.....	PN152
THE WITNESS WITHDREW	PN163
VISHAL KAKKAR, AFFIRMED	PN185
EXAMINATION-IN-CHIEF BY MR BOROBOKAS.....	PN185
EXHIBIT #R1 WITNESS STATEMENT OF VISHAL KAKKAR.....	PN194
CROSS-EXAMINATION BY MS PRESDEE	PN199
THE WITNESS WITHDREW	PN287
SANDRA WILSON, AFFIRMED	PN299

EXAMINATION-IN-CHIEF BY MR BOROBOKAS.....	PN299
EXHIBIT #R2 WITNESS STATEMENT OF SANDRA WILSON	PN308
CROSS-EXAMINATION BY MS PRESDEE	PN312
THE WITNESS WITHDREW	PN332
SANDRA WILSON, RECALLED.....	PN332
CROSS-EXAMINATION BY MS PRESDEE, CONTINUING	PN332
THE WITNESS WITHDREW	PN379
EXHIBIT #R3 WITNESS STATEMENT OF BRYAN TUIT	PN382
EXHIBIT #A5 OUTLINE OF SUBMISSIONS OF APPLICANT DATED 10/02/2023	PN383
EXHIBIT #A6 OUTLINE OF SUBMISSIONS OF APPLICANT IN REPLY DATED 10/03/2023.....	PN384
EXHIBIT #R4 SUBMISSIONS OF THE RESPONDENT	PN426