



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

VICE PRESIDENT ASBURY

C2021/4501

s.739 - Application to deal with a dispute

**Australasian Meat Industry Employees Union, The
and
Primo Foods Pty Ltd
(C2021/4501)**

Primo Foods Pty Ltd - JBS Primo Wacol Enterprise Agreement 2019

Brisbane

10.00 AM, MONDAY, 17 JULY 2023

Continued from 03/04/2023

PN1

THE VICE PRESIDENT: Could I just start by taking the appearances.

PN2

MR C BUCKLEY: Yes. Good morning, Vice President. If it please the Commission, my name is Buckley, initial C, industrial officer for the AMIEU and I appear for the applicant.

PN3

THE VICE PRESIDENT: Thank you.

PN4

MR W ASH: Vice President, if it pleases the Commission, Ash, initial W. I appear for the respondent.

PN5

THE VICE PRESIDENT: Thank you. Are there any preliminary matters before we start?

PN6

MR BUCKLEY: No, I don't believe so, Vice President.

PN7

THE VICE PRESIDENT: Okay. So there is evidence going to be called from Mr Li and Mr Earle; is that the case?

PN8

MR BUCKLEY: Yes. I understand from a discussion with my learned friend that he doesn't have any cross-examination for Mr Earle and would be content for his evidence simply to be tendered.

PN9

THE VICE PRESIDENT: Okay. That's the case?

PN10

MR ASH: That's right.

PN11

THE VICE PRESIDENT: All right. Then we will mark that exhibit as A1.

**EXHIBIT #A1 WITNESS STATEMENT OF WARREN EARLE
DATED 03/05/2023 PLUS ATTACHMENTS**

PN12

We might just get Mr Earle to swear the truth of his statement - - -

PN13

MR BUCKLEY: Yes.

PN14

THE VICE PRESIDENT: - - - and we'll leave it at that. Thank you.

<WARREN EARLE, SWORN

[10.01 AM]

EXAMINATION-IN-CHIEF BY MR BUCKLEY

[10.01 AM]

PN15

MR BUCKLEY: Mr Earle, have you prepared a statement for the purposes of today's proceedings?---Yes, I have.

PN16

Do you have a copy of that statement in front of you?---Yes, I do.

PN17

Is that a statement of some three pages in length, signed and dated by you at the end?---Yes, it is.

PN18

Dated 28 April 2023?---What date was that?

PN19

I'm sorry, what date do you have there?---3 May.

PN20

Sorry. There are a total of four attachments to that statement; is that correct?---Yes.

PN21

Are there any corrections or deletions that need to be made from that statement?---No. I reviewed it this morning, it was correct.

PN22

All right. Are you prepared to state on oath that the contents of that statement are true and correct?---I do.

PN23

Thank you, Vice President.

PN24

THE VICE PRESIDENT: Thank you. As I said, it's exhibit A1.

PN25

Thank you, Mr Earle. You're excused?---Thank you.

<THE WITNESS WITHDREW

[10.02 AM]

PN26

THE VICE PRESIDENT: Do you want to make an opening or just call Mr Li?

*** WARREN EARLE

XN MR BUCKLEY

PN27

MR BUCKLEY: I didn't propose to make an opening, Vice President. The ultimate point I think is of fairly short compass. I just propose to call

Mr Li. Mr Earle might get him, he's just outside, and I understand he will take an affirmation rather than an oath.

PN28

THE VICE PRESIDENT: Great, thanks.

<SITE LI, AFFIRMED

[10.03 AM]

EXAMINATION-IN-CHIEF BY MR BUCKLEY

[10.04 AM]

PN29

MR BUCKLEY: Mr Li, could you state your full name for the Commission, please?---My full name is Site Li, S-i-t-e, and last name is Li, L-i.

PN30

All right. You have prepared a written statement for these proceedings; is that correct?---Yes.

PN31

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

PN32

Is that statement three pages long and signed by you on the third page?---Yes.

PN33

Is there an attachment, a letter, attached to your statement?---Yes.

PN34

All right. Are you prepared to affirm that the statement you have given is true and correct?---Yes, it's true and correct.

PN35

Right. Thank you. I don't have any other questions for Mr Li.

CROSS-EXAMINATION BY MR ASH

[10.05 AM]

PN36

MR ASH: Mr Li, you were first signed off as a backup Multivac operator. That's right, isn't it?---After, yes, I finished the operator training.

PN37

The roster that you work is four days of eight hours and one day of six hours; is that correct?---Yes.

PN38

After you were signed off as a backup Multivac operator you were required to step up as a Multivac operator now and again; is that right?---Can you say again?

*** SITE LI

XN MR BUCKLEY

*** SITE LI

XXN MR ASH

PN39

When you were signed off as a Multivac operator - - -?---Yes.

PN40

- - - the first sign-off you had to be a backup, you would be directed to work as a Multivac operator some days and not other days; is that correct?---Yes.

PN41

You would be told before the shift started by the supervisor that on that day you needed to step up as a Multivac operator; is that right?---Usually the supervisor don't tell me I need doing machine operator today. I just do it. If they don't want me doing the operator, they tell me to doing the other area or other job.

PN42

So what I'm asking you about though is that time when you're only a backup Multivac operator?---Yes.

PN43

You wouldn't be asked to work as a Multivac operator every day; is that right?---Is ask a supervisor or - - -

PN44

Did you work as a backup Multivac operator every day?---Yes, but I still working a machine, Multivac operate.

PN45

Would your supervisor tell you at the start of the shift, 'I need you to work today as a Multivac operator'?---No, they don't need to tell me. They didn't tell me, so I just doing that job.

PN46

And you always did that job?---Yes.

PN47

Multivac operator?---Yes, and we have two Multivac operates. It's on the other machine, the other Multivac machine, but we were changing every break time, so -yes. So always I just working - I just - my job is Multivac operate and I don't need to ask supervisor, 'Today do I need to work - do I need to be machine operate?' I just do it, yes.

PN48

Just to be clear, Mr Li?---Yes.

PN49

You were first signed off as a backup Multivac operator in January 2018; is that right?---Can you say the date again.

PN50

January 2018?---I am not really sure when I'm signed off for the Multivac operate, because they didn't give me any paperwork or information.

*** SITE LI

XXN MR ASH

PN51

But you're saying that from that time when you were signed off as a backup Multivac operator - only backup Multivac operator - that you worked as a Multivac operator every day?---Yes, and before I say no, because they training me maybe - I don't really sure how long they training me, but I don't even know what time I finish the training, yes, but I just doing that job. I only got for the (Indistinct) company training. I didn't got the Multivac training; the paperwork.

PN52

You don't have the paperwork?---Yes, I don't have the paperwork.

PN53

But you agree you were signed off as a backup Multivac operator before that?---Yes.

PN54

I suggest to you, Mr Li, that you didn't work as a Multivac operator every day, only some days?---But - no, five days, but always, like one week - maybe one month only one or two days I working the other job. Like, if I did offside - if I doing offside they didn't pay me, because we were changed both sides every break time, but doing the operate - maybe the other full-time level 5 doing first three hours and we going break and come back, I doing other two hours and go break and we just swap, but they didn't pay me level 5 like that. If I doing operate all day, no swap, they would pay me level 5.

PN55

So a Multivac operator is a level 5 job; is that right?---Yes.

PN56

And when you worked as a Multivac operator you were paid at the level 5 rate of pay for the hours that you worked as a Multivac operator; is that right?---Only all day. If I swap, they didn't pay me level 5.

PN57

So if you worked more than four hours on any shift in the Multivac job, you were paid level - - -?---Level 2.

PN58

If you worked more than four hours, Mr Li - - -?---No.

PN59

- - - you were paid level 5?---Just all day.

PN60

All day, yes?---Eight hours or six hours. Like, I start first three hours and the other full-time level 5 swap me in two hours, and I stay offside and go break and come back again, I working the other two hours, they still pay me level 2. Only I don't swap with my offside and I control the machine all day, eight hours, they would pay me level 5.

*** SITE LI

XXN MR ASH

PN61

Then in December 2019 you were also then signed off as a backup QC?---Yes.

PN62

Is that right?---Yes.

PN63

After that on some days you were required to step up as a QC and some days you were required to step up as a Multivac operator?---Usually it's QC and they need a machine operate they come and tell me, 'Oh, I need you doing machine operate today', so I was doing the machine operate that day.

PN64

You were told at the start of each shift whether you would be working QC or whether you would be a Multivac operator or what you would be doing that day; isn't that right?---No, they didn't tell me because I just go work, start my QC's job. If they need I doing operate, they would tell me, but - yes, usually it's QC; quality check.

PN65

Quality checking?---Yes, quality check, QC.

PN66

So, Mr Li, you assumed that you would always be working in QC; is that right?---When I started training QC, yes.

PN67

In your statement at paragraph 10 - - -?---Yes.

PN68

- - - you state that you did the QC job every day - - -?---Yes.

PN69

- - - unless the supervisor came and told you differently?---Yes. So, yes, that's what I say. I just start my QC job every day and if some days they need a Multivac operate they would come and ask me, 'I need you to doing Multivac today', so I doing Multivac in that day.

PN70

But they would also come and tell on the day whether you were working as a QC?---No, they didn't tell me.

PN71

But you agree that some days you worked as a QC, some days you worked as a Multivac operator?---Usually it's QC when I start QC's training, yes.

PN72

So you agree that you didn't work in the QC job every shift; is that right?---What you mean every shift? Like, my shift or different shift?

*** SITE LI

XXN MR ASH

PN73

You didn't do the QC job every single day. Some days you worked as a Multivac operator; isn't that right?---Can you say again?

PN74

Some days you worked as a Multivac operator - - -?---Yes.

PN75

- - - some days you worked as a QC. That's right, isn't it?---You mean the half/half or - - -

PN76

No, just that you didn't work as a QC every single shift. Some shifts you worked as a Multivac operator?---Yes, yes.

PN77

Is that correct?---Usually it's a QC, sometimes it's a Multivac operate, yes.

PN78

But you were told at the start of every shift what you would be doing?---No, they didn't tell me. Nobody tell me. Nobody tell me, 'I need you doing QC today', or, 'I need you doing Multivac operate today.' I just start my QC's job, yes, and if they need I doing other job they would come and tell me, yes. They didn't tell me before I start.

PN79

You also say in your statement - - -?---Yes.

PN80

- - - that sometimes you were given a level 2 job to do; is that right?---Yes, it's really, really this time like the weight bacon. Like, yes, it's weight bacon and pack it, put down the belt, but not much, yes.

PN81

At paragraph 13 of your statement - - -?---Yes.

PN82

- - - you state that you had been doing the QC job full-time for a year?---Yes.

PN83

That's not true, is it?---When I start QC training, I just doing QC for that date and just kept doing to when up me to the level 5. From beginning I start training to they up to me full-time, level 5 QC, I always doing QC's job, level 5's job.

PN84

Mr Li, your evidence earlier was that some days you would work as a Multivac operator?---Yes, some - like, Multivac operator is still level 5, but I don't really agreeing they tell me to doing the Multivac operate, because that is two jobs, I just got one pay. That's different job, yes.

*** SITE LI

XXN MR ASH

PN85

You preferred to work as a QC?---Yes, yes, yes.

PN86

Rather than a Multivac operator?---Yes, because - yes, because I finish QC's training and they still tell me, 'Before you finish Multivac operator's training, so they all same, level 5's job, so you have to do it', but in my working area not much people doing that, like two jobs, yes.

PN87

You preferred to work as a QC?---Yes.

PN88

You didn't want to work as a Multivac operator?---Yes.

PN89

Isn't that right?---That's correct.

PN90

That's why you knocked back an offer that was made to you to be a permanent Multivac operator in January 2021?---No, no, because I don't know - I finished - the Multivac operate is finished and in that date when I doing machine operate I always ask them, 'Can I get the full-time level 5?' and they always tell me, 'Sorry, we have no position to up you to Multivac operate.'

PN91

But you were offered a full-time level 5 job as a Multivac operator - - -?---Yes.

PN92

- - - and you said no?---No, no, no, that's - when I ask union, I say if they can still tell me I have to waiting level 5's job and, you know, maybe - I don't know, maybe the Warren tell the - talk to the company and have some - after I ask Warren and they talk to me, 'Do you want we up you to the Multivac operator's level 5?' I said, 'No', because that time I finished the QC's training so I don't want to be Multivac operate. That's different level 5's title.

PN93

So even though you knocked back - you said no to the permanent Multivac operator position, which is a level 5 position - - -?---Yes.

PN94

- - - you're claiming that you've been underpaid since then to the end of August 2021?---Can you say again the question?

PN95

Do you agree that the Multivac operator is a level 5 job?---Yes.

PN96

It's the same pay as a QC?---Yes.

*** SITE LI

XXN MR ASH

PN97

So you were offered to be paid level 5 and you said no, you wanted to be QC?---Yes, that's it. I finish the QC's training, I can be level 5 QC - it's a quality check, QC - so I just say no to the Multivac who is level 5.

PN98

That's because, Mr Li, you wanted to be QC. You didn't want to be a Multivac operator?---Yes, that's it. If I want doing Multivac operate why you guys training me to do QC and tell me, 'You can do Multivac operate now', and I don't want to be - to doing two jobs, because when I doing Multivac operator I ask them - I always ask them, 'When can I get the permanent level 5?' They always said, 'No position', and my supervisor tell me, 'Oh, we can train you to doing QC. That's more fast to get permanent level 5.' Okay, I say yes, and when I finish the QC's training they still tell me, 'Oh, we have no position. You have to wait', so I just talk to the union, talk to the Warren, and they said that's not fair, they will talk to the company. After that the supervisor ask me, 'We can up you to the Multivac level 5', but I say no because I want to up to the QC's level 5, because I already finished the training.

PN99

You had also finished the training - - -?---The QC's training.

PN100

- - - as a Multivac operator - - -?---No, no, QC, quality check.

PN101

But you were signed off as a backup in both QC and Multivac operator?---Yes.

PN102

Yes?---Before that I don't know I already finished the Multivac operator, because they didn't give me the letter or any paper or anything. After I talk to Warren and they tell me, 'Oh, you already signed off Multivac operate', yes, because I tell me, 'I don't want doing the Multivac operator any more.' They say, 'Oh, because you already signed off and finished training for the Multivac operator and that is the same level 5's job, so you have to do it.' Yes, that's why I already say no for Multivac operate.

PN103

Mr Li, I suggest to you again that you were told at the start of every shift what you would do that day?---Who will tell me?

PN104

Lorena O'Byrne, your supervisor?---No.

*** SITE LI

XXN MR ASH

PN105

There would be a time sheet and they would write on the time sheet what job you did that day; whether you were told to do QC or Multivac or a level 2 job?---I am not really sure they have time - they put something on the paper, but they didn't tell me, 'You need doing QC today', or, 'You need doing Multivac operate today',

because when I start training QC I just go to my working area, just doing my job - my QC's job, yes.

PN106

And sometimes you were told - - -?---Yes, yes - - -

PN107

- - - 'You're a Multivac operator today'?---Yes, sometimes they would tell me, 'Oh, I need you doing Multivac operate today', yes, like that.

PN108

No further questions, Vice President.

PN109

THE VICE PRESIDENT: Thank you. Re-examination, Mr Buckley?

PN110

MR BUCKLEY: No, I don't have any re-examination.

PN111

THE VICE PRESIDENT: Thank you for giving your evidence, Mr Li, you're excused?---Yes, thank you.

PN112

You can wait in the room if you would like or go about your business, whatever you would like to do?---Okay, yes.

PN113

Thank you?---Thank you. Yes, thank you.

<THE WITNESS WITHDREW

[10.23 AM]

PN114

THE VICE PRESIDENT: Do you want to go straight to submissions?

PN115

MR BUCKLEY: I believe Mr Ash has a witness.

PN116

THE VICE PRESIDENT: I'm so sorry. You've got a witness, Mr Ash.

PN117

MR ASH: I've got Mr Stephenson - - -

PN118

THE VICE PRESIDENT: I'm sorry, yes.

PN119

MR ASH: - - - as a witness for the respondent. Thank you.

*** SITE LI

XXN MR ASH

PN120

THE VICE PRESIDENT: Of course. Sorry, I've just been reminded we need to mark Mr Li's statement. We will mark it as A2.

EXHIBIT #A2 WITNESS STATEMENT OF SITE LI PLUS ATTACHMENT

<NEIL STEPHENSON, AFFIRMED [10.24 AM]

EXAMINATION-IN-CHIEF BY MR ASH [10.24 AM]

PN121

MR ASH: Mr Stephenson, you prepared a statement in connection with these proceedings?---Yes.

PN122

Do you have it with you?---Yes, I do.

PN123

Have you read it recently?---Yes, I have.

PN124

Are there any corrections or amendments that you would like to make to the statement?---Yes, on page 1, number 5, there is a typo. 'Site Li has always worked on afternoon shift in the bacon room', it should be. NS1, which is his payroll sheet, it should state the number of hours, not days.

PN125

With those amendments to your statement, is your statement true and correct to the best of your knowledge and belief?---Yes, it is.

PN126

I have no further questions.

PN127

THE VICE PRESIDENT: Thank you.

PN128

MR ASH: I tender that statement.

PN129

THE VICE PRESIDENT: Sorry, can you just take me to that second amendment. We're deleting 'bacon slice room' and you've just got 'bacon room'?---In S2 it has - - -

PN130

Yes?---On the top of the page it has, 'Number of days', for Site Li's hours; the hours sheet.

PN131

Yes?---It should actually have 'Number of hours', not days.

*** NEIL STEPHENSON

XN MR ASH

PN132

'Number of hours', okay, yes.

PN133

MR ASH: Those are the only two amendments?---That's the only two, yes.

PN134

THE VICE PRESIDENT: So the other one was what, delete - - -?---On the first page - - -

PN135

Yes, paragraph 5?--- - - - it was just a typing mistake on number 5.

PN136

Yes?---'Afternoon shift in the bacon room - bacon slice room.'

PN137

Right. Thank you?---Sorry.

PN138

MR ASH: Just to make sure, so with those amendments the statement is now true and correct to the best of your knowledge and belief?---Yes, it is.

PN139

I tender the statement.

PN140

THE VICE PRESIDENT: We'll mark that as exhibit R1.

EXHIBIT #R1 WITNESS STATEMENT OF NEIL STEPHENSON

PN141

No further evidence-in-chief?

PN142

MR ASH: No further questions.

PN143

THE VICE PRESIDENT: Cross-examination, Mr Buckley?

PN144

MR BUCKLEY: Yes. Thank you, Vice President.

CROSS-EXAMINATION BY MR BUCKLEY

[10.26 AM]

PN145

MR BUCKLEY: Mr Stephenson, you tell us that on the afternoon shift there are nine lines. I assume that's nine production lines in the bacon slice room?---There is 11 lines in total, nine are operational at the moment.

*** NEIL STEPHENSON

XXN MR BUCKLEY

PN146

Okay. So when all the production lines are operational there is a maximum of 11 lines; is that correct?---Correct.

PN147

Are there any occasions when you might run fewer than nine production lines?---Occasionally, depending on whether work requires it.

PN148

All right. So if there were fewer orders, for instance, if you didn't have as much production to do, you might run fewer than nine lines; is that correct?---We can.

PN149

But normally you would run nine production lines?---Yes.

PN150

Can you tell me, going back to the period of 2019 through 2021 were the same arrangements in place in the bacon room? Were there nine lines operating during that period?---I believe so, yes.

PN151

So it would only be occasionally, is it, that there would be fewer than nine production lines operating?---Nine is normally our lowest that we have been.

PN152

Right?---But we can normally go up to 11.

PN153

Okay?---It depends on volumes required.

PN154

All right. When there are nine production lines operating how many Multivac operators do you require?---Nine.

PN155

Okay, so there is one Multivac operator - - -?---There is one Multivac per line.

PN156

- - - per production line?---Yes.

PN157

So if there are 11 production lines operating there would be 11 Multivac operators required; is that correct?---Yes, that is - yes.

PN158

So when you have nine production lines running how many quality checkers do you require?---You can have one QC, quality check, per up to three lines.

*** NEIL STEPHENSON

XXN MR BUCKLEY

PN159

All right. Does that mean if you're operating nine production lines you would have three quality checkers?---No, there's a quality checker for every three lines. So if we were running nine lines you would have three QCs.

PN160

Right. If you're running 11 production lines how many QCs would you have?---You would have five or six.

PN161

When you're running nine production lines would you ever have more than three quality checkers on the shift?---Yes, we can have more than three.

PN162

Well, for what reason might you run more than three quality checkers on a shift of nine production lines?---We wouldn't run more than three, but if they're in that position it's part of their normal level 5 role and they would then be put into different functions. So a QC, if he was signed off on both a Multivac as well as quality checking, that person could then run a Multivac if needed.

PN163

Right. Now, you referred to the Multivac operators and the quality checkers collectively as the key roles in the bacon slice room; is that right?---They're two of the key roles. There is more.

PN164

Okay?---But they are two of the key roles.

PN165

All right. You have identified in your statement you have a number of backup Multivac operators and backup quality checkers; is that right?---Yes.

PN166

In paragraph 11 of your statement you give the numbers of those, so currently it seems there is six backup employees trained on Multivac machines, five of whom are also trained as QCs; is that right?---Cross-trained, so they're trained for both, yes.

PN167

You have got two other backups who are trained as QCs?---Only as QCs.

PN168

Only. All right. If you can remember going back to 2019 to 2021, during that period were there a similar number of backups in those positions?---Yes, there should have been. It was very busy back then with COVID. There was a lot of people that were obviously off due to illness at that stage, but we would have had the same number of backups for nine lines.

*** NEIL STEPHENSON

XXN MR BUCKLEY

PN169

All right. Now, those are the backups if you like, but obviously there are people who occupy the substantive position if you like of level 5 as quality checker; is that right?---There are full-time operators, yes, as QCs.

PN170

And full-time Multivac operators?---Correct, yes.

PN171

Who are classified by Primo as level 5 employees?---As operators, yes. Level 5 operators.

PN172

So let's start with currently. How many people would be permanently classified, if you like, as level 5 Multivac operators?---We could have more than nine, but there is a minimum nine.

PN173

But how many are currently - - -?---Nine.

PN174

- - - permanently classified as - - -?---There would be nine.

PN175

And how many people are permanently classified as level 5 quality checkers?---I believe we have five.

PN176

Right. Now, can you tell me would those numbers also be correct for the period going back to 2019 to 2021?---I would have to check back then, but we should have had the same amount for then.

PN177

All right. As I understand it, you're the contact for - is it any team member who calls in absent; is that correct?---Yes.

PN178

So that's not just for the bacon slice room, is that across all of the - - -?---No, I look after bacon raw, as well as bacon packed.

PN179

Okay. So you compile a list of the employees who are absent on any particular day?---Yes, the staff will contact me and I do a list.

PN180

You obviously work out which employees are in which section and you send a list of those names to the relevant supervisor in that section; is that right?---Yes.

*** NEIL STEPHENSON

XXN MR BUCKLEY

PN181

So if it goes to the bacon slice room, you send that information to Lorena O'Byrne; is that correct?---Lorena O'Byrne and, if she's absent, the other supervisors.

PN182

Right. But the point in time that you send her that information she will know the production target she has for that day; is that correct?---She knows what lines to be running, yes.

PN183

And so she will know how many Multivac operators are needed; is that correct?---Yes.

PN184

She will also know how many quality checkers she needs?---Yes.

PN185

I assume again this was the same practice that was in place back in 2019 - - - ?---Yes.

PN186

- - - to 2021?---Yes.

PN187

Can I ask you about the practice of how you deal with longer term planned absences. Let's take a situation where you know that a Multivac operator or a quality checker is going to be away for some weeks at a time. Let's say they've taken a period of annual leave. What happens in terms of replacing those employees?---Lorena has - she has the people that are on annual leave and she will allocate someone on a daily basis to who's required based on attendance.

PN188

So even though you might be aware that a Multivac operator or a quality checker is away for a number of weeks and will need to be replaced, the decision as to who replaces them is done on a daily basis?---Daily basis.

PN189

That's as you understand it?---Correct.

PN190

Again, if someone is off work perhaps due to injury - perhaps they've gone off on workers compensation - and you know they will be off for an extended period of time, is that same practice followed?---Same process is followed, yes.

PN191

What happens when a person occupying one of these substantive key roles resigns?---Then Lorena or myself - a discussion with Lorena and I - we would offer that position to one of the backups to step into a full-time role.

*** NEIL STEPHENSON

XXN MR BUCKLEY

PN192

Right. Whose decision is it to offer that person a substantive position?---The person directly or to offer a position?

PN193

Who decides whether or not an employee is to be offered a substantive position? Whose decision is it?---The business.

PN194

Yes, but who in the business, Mr Stephenson?---Lorena would - based on the knowledge of the person that was under her, Lorena would offer a position.

PN195

So does she have the authority to change the person's classification?---I do. We send that to payroll to have that - you would sign off. So the person would be offered a position. If they accept that position they sign a letter of acceptance and that gets sent through to payroll to change their classification.

PN196

All right. Can you tell me, how long does that process normally take?---Within two weeks, I would believe would be a fairly good - - -

PN197

So you're saying that when a person occupying a substantive position resigns from the business, that person is replaced within a matter of two weeks?---Within a couple of weeks.

PN198

Can you tell me, in August 2021 Mr Li was offered a substantive role as quality checker; is that right?---In - - -

PN199

August 2021?---He was offered a permanent role level 5 QC in August, yes.

PN200

Yes, so can you tell me what led to Mr Li being offered that permanent role?---I would assume that someone had resigned from their position or changed position.

PN201

You say you assume, so you don't - - -?---I don't - - -

PN202

- - - have a specific recollection?---No, not a specific recollection.

PN203

All right. Can I just take you to look briefly at attachment NS2 to your statement?---Yes.

PN204

There is a list of entries. They commence with a pay end date of 4 March 2018?---Yes.

*** NEIL STEPHENSON

XXN MR BUCKLEY

PN205

It ends down the bottom of the page with 25 August 2019?---Yes.

PN206

But not every week between those two dates has an entry in that table, does it?---No.

PN207

Is it the case that for those pay weeks, if you like, that aren't entered on that table, are they weeks in which Mr Li was not required to perform any duties as a level 5?---Correct.

PN208

So those will be weeks where he had spent the entire week doing level 2 work; is that right?---In his normal role.

PN209

THE VICE PRESIDENT: Is his normal role operating the vacuum pack machine by now or is it - - -?---It is now, yes, your Honour.

PN210

Was it then?---No.

PN211

When you just said he just does a level 2 - - -?---No. When they are asked to step up on a daily basis we pay them a level 5 rate for the day and then when they're not doing that role they can go back to normal roles, and they go back to their normal level 2 position.

PN212

What do you do with part of a day?---Normally we would pay them for part of the day if it's more than four hours.

PN213

MR BUCKLEY: Can I also confirm as I understand it, Mr Stephenson, these dates that you have here, all of these dates are before he was signed off as a quality checker - as a backup quality checker; is that correct?---No, he has got to be signed off - he gets - you get a training letter and then once you've accepted our training letter then we will pay you to step up into that role.

PN214

Okay. If I can get you to take a look at paragraph 13 of your statement, Mr Stephenson?---Yes.

PN215

You say here - it says here that:

*** NEIL STEPHENSON

XXN MR BUCKLEY

PN216

The reason that Site was not stepped up as regularly prior to being signed off as backup QC was both because at that time he did not hold his second backup

competency, but also because absenteeism was, as mentioned, much lower prior to the pandemic.

PN217

So in the first sentence of that paragraph you say that he wasn't signed off as a backup QC until 16 December 2019?---He was only signed off as a QC backup from 16 December.

PN218

Yes?---Yes, but from the - he was - and it's obviously backup operator from around 15 January.

PN219

I understand?---Yes.

PN220

So this table in NS2 - attachment NS2 - - -?---Yes.

PN221

- - - those dates are when he was a backup Multivac operator?---The payroll side doesn't segregate from Multivac to QC, so he could have been doing either of those two roles at that time.

PN222

But he was only signed off, what, in December 2019; is that correct?---As a fully qualified backup. As a trainee operator he can be signed - he can use that machine with a support person with him.

PN223

I see. So it's possible that even during this period he might have been doing some quality check work at least while being trained?---On those dates he could have been, yes.

PN224

I see. That's all I have, Vice President, for Mr Stephenson.

PN225

THE VICE PRESIDENT: Thank you. Re-examination?

PN226

MR ASH: Nothing arising, Vice President.

PN227

THE VICE PRESIDENT: Thanks for giving your evidence, Mr Stephenson. You're excused. You can go about your business or stay in the room, whichever you would prefer?---Thank you.

<THE WITNESS WITHDREW

[10.45 AM]

*** NEIL STEPHENSON

XXN MR BUCKLEY

PN228

THE VICE PRESIDENT: Do you want to have a break before you make your closing submissions or do you want to just keep on - - -

PN229

MR BUCKLEY: I wouldn't mind having just a few minutes.

PN230

THE VICE PRESIDENT: How about we come back at 11 o'clock?

PN231

MR BUCKLEY: Yes, very well.

PN232

THE VICE PRESIDENT: That would be good. Thanks.

SHORT ADJOURNMENT

[10.45 AM]

RESUMED

[11.05 AM]

PN233

THE VICE PRESIDENT: Mr Buckley?

PN234

MR BUCKLEY: Yes, thank you, Vice President. In terms of submissions I might just start by making a couple of comments about the evidence. The dispute that the Commission has been asked to arbitrate obviously relates to what should be the base rate of pay for the purposes of calculating Mr Li's personal leave and public holiday entitlements between the dates that are specified in the application and the submissions. So really between the period of September 2019 and the date in August 2021 when he's appointed permanently to the substantive Level 5 classification.

PN235

In terms of wages records there are some wages records attached to Mr Earle's statement, and they cover the period from September 2019 until March 2021. I don't propose to go to them in any detail, but to simply refer to the factual discussion in the applicant's submissions.

PN236

In the course of that I have identified everywhere that I have been able to find in the pay records where he was paid less than a Level 5 rate of pay, and I've identified a number of weeks and the hours in each of those weeks where he was paid less than Level 5. And of course in the course of those submissions it seems that except in one particular instance each of those payments has been corrected. In other words there's a number of weeks where he's been paid the Level 2 rate of pay, but in subsequent weeks there appears to be adjustments which correct that and instead pay him at the level rate of pay for those hours.

PN237

The hours for which he was paid Level 2 and the hours for which he was paid Level 5 seem to correspond exactly, with the exception of a single eight hour period for which I wasn't able to identify any correction. I made the submission in

the applicant's submissions that given the corrections that have been made to all the other Level 2 payments one might have thought that the failure to correct – or the eight hour period that was not corrected might have been an oversight, and I notice that Mr Stephenson in his evidence, that is in his written statement, says that that payment subsequently had been corrected.

PN238

In other words they've gone back and paid Mr Li the Level 5 rate of pay for that time. But having said that they said they were not sure at this stage whether or not he worked as a Level 2 or as a Level 5 that day. But it would seem though that Mr Li worked continuously at a Level 5 job, whether that be a quality checker's job or a Multivac operator's job throughout that period for which we have those wage records. And we heard from Mr Li today. He was adamant about the fact that he was not told on a daily basis which position he was to fill.

PN239

THE VICE PRESIDENT: Does that really matter though, because aren't we really dealing with when the mixed functions or higher duties clause operated, whether that's counted in his base rate of pay?

PN240

MR BUCKLEY: I agree it probably doesn't matter, but I mention it simply because that is one of the contentions that's been made by the respondent in this matter. They seem to suggest that whether or not he was guaranteed to receive that Level 5 rate had some bearing upon it. That's not the applicant's submission though. And to the extent that that has any relevance we heard Mr Stephenson's evidence that whilst he provides the information about daily absences to Ms O'Byrne that she retained some details about longer term absences that might need filling such as people who are on annual leave.

PN241

Essentially though the question really does turn upon one of construction. The base rate of pay of course is defined in section 16 of the Act, the Fair Work Act, in terms of the rate of pay payable for employees' ordinary hours of work. When it comes to personal leave it's section 99 and for public holiday payments section 116. The NES provide that for each of those occasions an employee is entitled to be paid their base rate of pay for their ordinary hours of work in the period.

PN242

The AMIE submits that 'in the period' necessarily refers to in the period of leave, and our submissions in the matter cite a passage from the Mondelez judgment where comment was passed on the operation of sections 96 and 99 and how it interacted with section 16, and referring to section 16 it says:

PN243

That section provides the rate at which the leave is paid. It is the employees' base rate of pay for their ordinary hours of work in the period. The term 'base rate of pay' is relevantly defined in section 16 to be the base rate of pay to the employee for his or her ordinary hours of work. Thus, both sections 96 and 99 compel the conclusion that it is necessary to ascertain an employee's ordinary hours of work and the rate of pay payable for that work in order for the

employee to be paid for that leave. Moreover, regardless of the period of leave taken - hours or days – employees will be paid at that rate for the hours that they are absent from work.

PN244

We submit that that means that there's a need to ascertain the rate of pay that would be payable for Mr Li's hours of work that he would have received but for the period of leave he took. And we say that for the timeframe that's covered for this dispute that rate of pay should be that of the Level 5.

PN245

It appears that Mr Li worked continuously throughout that period performing work that attracted the Level 5 rate of pay. Now, he received that rate of pay as a consequence of the higher duties clauses in the various enterprise agreements that applied to him.

PN246

Now, the respondent's first contention is that the higher duties clause provides for that rate to be payable only when the employer requires the employee to perform particular work, and therefore the clause has no application on a day when the employee by reason of his absence is not required to perform such work.

PN247

We submit that that contention can't be correct, and for two reasons. Firstly, we're dealing with an employee's entitlement under the National Employment Standards. The employer can say, well the employee's not entitled to higher duties because they're not present and they don't perform work on that day. But of course any employee's entitlement to receive wages, the right to receive any rate of pay, depends on the employee being ready, willing and able to perform work at the direction of their employer.

PN248

If that logic, the logic of the respondent's first contention, were correct, then one would conclude that the rate of pay for any employee who is absent from work would be nil. They're not ready, willing and able to perform work and they would have no rate of pay applicable for the period of leave, and that's why we submit the exercise that has to be undertaken is to determine what the rate of pay is that the employee would have earned but for the period of leave.

PN249

Of course one of the consequences if the respondent's first contention were accepted, and that the higher duties clause because of its terms prevents an employee from receiving the higher rate of pay for periods of leave, then in those circumstances it wouldn't matter whether they knew the employee was to be performing that work, or indeed if the employer took a decision the employer could simply decide not to fill the substantive position. They could tell that employee you're going to be doing the Level 5 job from here on, but we're not going to change your substantive classification.

PN250

As I understand it under the terms of the enterprise agreement an employee's classification is not changed unless that's been signed off by a particular manager. They could have a person permanently performing a Level 5 job, but never receiving a Level 5 rate of pay during periods of leave.

PN251

And essentially that's the position that Mr Li found himself in, which takes us to the second contention that Mr Li was not guaranteed to receive those higher duties, and therefore might not receive them during those periods where he was absent had he attended for work. But we say that that's not really borne out by the evidence. If you look at the evidence it's clear that there is a continuous period where he performs nothing but Level 5 work.

PN252

It is the case, and it's clear from Mr Stephenson's evidence that Mr Li has performed higher duties over a much longer period than the period that's covered by the dispute, and that's clear from attachment NS2 to Mr Stephenson's statement. In that period there were times that he worked as a Level 5 and he also worked as a Level 2. By my calculations there are some weeks sort of absent from that list. We're told those are weeks in which Mr Li didn't work in a Level 5 position at all.

PN253

Between the first and last date on that table there appear to be 78 weeks, but by my calculation and taking into account the weeks where he worked zero hours, he still worked an average of 20.9 hours per week as a Level 5 over that period. In other words he still worked most of the time at a Level 5.

PN254

The union has tried to be practical about this and it hasn't taken issue with that. We understand there's a period where there was some uncertainty as to what work he was performing, but once we get to the stage where an employee is effectively working all of their hours each week at a Level 5 rate, whether that be quality checker or a Multivac operator, it really becomes untenable to say that the rate of pay for their ordinary hours of work is anything other than that of a Level 5 employee. That is the rate of pay that they get for their ordinary hours of work.

PN255

THE VICE PRESIDENT: Mr Buckley, what do you say about the 2020 agreement has got a specific clause in it, 9.1.4.2, about annual leave and higher duties which provides for an averaging in the four weeks prior to the leave being taken? It's on page 37 of the 2020 agreement. It doesn't seem to be in the 2016 agreement that I can see.

PN256

MR BUCKLEY: No.

PN257

THE VICE PRESIDENT: But it's in the 2020 agreement. So the parties have gone to the trouble of putting in a specific clause that deals with annual leave and says you average it over the four weeks prior to the employee going on leave. So

I assume there that's why there isn't a dispute about annual leave, because the employer has been applying that specific provision.

PN258

MR BUCKLEY: Sorry, I'm just looking for the clause 9. - - -

PN259

THE VICE PRESIDENT: 1.4.2. It's under 9.1.4 which is payment for annual leave. Yes. So there's a specific clause that deals with a formula. Doesn't that suggest that if there isn't a clause like that then it's not included?

PN260

MR BUCKLEY: It suggests that that's not included in the agreement, but this is an argument about what's required by the National Employment Standards, and the issue is in terms of the National Employment Standards what is Mr Li's base rate of pay for his ordinary hours of work. So in that sense it depends upon the statutory construction of those provisions of the National Employment Standards rather than the terms of the agreement.

PN261

THE VICE PRESIDENT: Okay.

PN262

MR BUCKLEY: As I said from the point at which Mr Li starts to work continuously in the Level 5 position then he receives the Level 5 rate of pay for his ordinary hours of work. And of course what you arrive at that stage as he continues to work at that rate with no variation it becomes increasingly untenable, we say, to argue that Mr Li's base rate of pay is a rate of pay that he never receives, except when he takes leave.

PN263

Then finally in response to the respondent's third contention, it relates to the definition that's contained in section 16 of base rate of pay, because it defines the base rate of pay as what's payable to their ordinary hours of work, but excluding certain components, and the contention seems to be made that the higher duties somehow constitutes some form of allowance for a separately identifiable amount. In our submission again that can't be correct. It's not described as an allowance and the higher duties clause doesn't provide for an allowance. It simply provides for a rate of pay to be paid to employees in particular circumstances.

PN264

Again we say that it could not be considered any other separately identifiable amount, for the simple reason that the language of the section for something to be separately identifiable implies that there is something for it to be separate from, in this case separate from the base rate of pay. The problem with that contention is in this case there is nothing to separate from the rate of pay. There is simply a single rate of pay and it has a single component, that is an amount of dollars paid per hour.

PN265

THE VICE PRESIDENT: What happens on part of the day? What happens if the employee is working for part of the day at the higher level and is only getting the proportionate amount of the allowance, or the rate as you describe it? How is the calculation done, because it seems like there isn't an averaging, there isn't a provision there, so how do you do it?

PN266

MR BUCKLEY: In relation to calculating leave?

PN267

THE VICE PRESIDENT: Yes. So let's say an employee has got a pattern of working higher duties for part of the day throughout the period before the employee takes a sick day or another day other than annual leave, because annual leave would be covered. But how does it work for a person who's worked part of the day? Because if you're saying it's a rate and that's it, end of story, how do you calculate it on part of the day?

PN268

MR BUCKLEY: I think the answer to that is we haven't contended that where a person moves – where a person is moving between the rates of pay, between for instance Level 2 and Level 5, that we accept that the person in that situation occupies a Level 2 position. It's the same reason that the union hasn't pressed the claim in relation to the earlier period where Mr Li worked a good portion of the time at Level 5, but nevertheless also worked at the Level 2 job for which he got the Level 2 rate of pay.

PN269

THE VICE PRESIDENT: But is this really an argument about whether Mr Li should have been reclassified given the amount of time he was working at Level 5? Because it seems to me that if you're going to say it's not a separately identifiable amount it arguably is for a person who's working part of the day. So why isn't it for a person working the full day or the full week, because you know the person's base rate, the rate at which they're classified, you know the rate, their pay when they're performing higher duties. So why isn't it separately identifiable?

PN270

MR BUCKLEY: Well, I suppose for the simple reason that for a person who works more than the prescribed minimum number of hours there is a single rate that applies for the whole day. The legislation doesn't apply the base rate of pay in terms of a person's contract rate or a person's classification rate. It's the rate of pay payable for their ordinary hours of work.

PN271

THE VICE PRESIDENT: But it excludes certain payments.

PN272

MR BUCKLEY: Yes. I suppose simply because there's no amount to be identified. I mean there is a single amount. The definition contemplates that there is some amount that could be identified that's separate from one's base rate of pay.

PN273

THE VICE PRESIDENT: How does the payslip show it? In a week where the amount is paid how does it shown in the payslip?

PN274

MR BUCKLEY: I suppose that's - - -

PN275

THE VICE PRESIDENT: If you go to Mr Earle's statement - - -

PN276

MR BUCKLEY: It's attached to WE2, and it's just shown - as I read the spreadsheet it's just shown as ordinary hours and a single rate of pay.

PN277

THE VICE PRESIDENT: So it just shows ordinary hours, 38, 38 and 32.

PN278

MR BUCKLEY: That's right, but - - -

PN279

THE VICE PRESIDENT: At a higher rate than the Level 2.

PN280

MR BUCKLEY: Yes.

PN281

THE VICE PRESIDENT: So where's the week where it's not Level 5?

PN282

MR BUCKLEY: For an example if we have a look at 16 February 2020.

PN283

THE VICE PRESIDENT: Where's the date?

PN284

MR BUCKLEY: If we're looking at Level 2 the pay end date is to the right of Mr Li's name. So there's some employee identification details, the surname, the first name, and then there's a pay end date.

PN285

THE VICE PRESIDENT: Yes. So this is the 16th.

PN286

MR BUCKLEY: The 16 February.

PN287

THE VICE PRESIDENT: 2019, 2020, what date?

PN288

MR BUCKLEY: 2020.

PN289

THE VICE PRESIDENT: Yes. So 16th of the 2nd 2020, went home early.

PN290

MR BUCKLEY: Yes. The ordinary hours there 23.96, and beside it a rate of pay \$20.55, which I understand is the Level 2 rate of pay.

PN291

THE VICE PRESIDENT: Okay. So you say in every week essentially the respondent has just treated it as a rate by paying 38 or whatever hours has been worked at that higher rate?

PN292

MR BUCKLEY: Yes. And that's consistent with the language of the higher duties clause, because it provides for a rate of pay.

PN293

THE VICE PRESIDENT: So sometimes the rate is 37.98, 36 - - -

PN294

MR BUCKLEY: I think that's hours.

PN295

THE VICE PRESIDENT: All right. So where is the dollar rate? It's shown as a total. It's that column, the next column over.

PN296

MR BUCKLEY: Yes. During that period the Level 3 rate is \$23.55 – sorry, the Level 5 rate is \$23.55, and the Level 2 rate is \$20.55.

PN297

THE VICE PRESIDENT: Level 2 or Level 3?

PN298

MR BUCKLEY: Level 2 is \$20.55, and the Level 5 rate is \$23.55.

PN299

THE VICE PRESIDENT: Okay.

PN300

MR BUCKLEY: And that increases when the new enterprise agreement comes into – well, I mean that's essentially the applicant's submissions. We say that there is no separately identifiable amount. There is simply a rate of pay that an employee gets for his ordinary hours of work, and once Mr Li begins to perform the Level 5 work essentially on a continuous basis – as I said whether that's quality checker or Multivac operator – and the rate of pay for his ordinary hours is the Level 5 pay that he receives. Thank you, Vice President.

PN301

THE VICE PRESIDENT: Thanks. What does the respondent say, Mr Ash?

PN302

MR ASH: Primo submits, Vice President, that by a proper construction of both agreements Mr Li was not entitled to any amounts under clause 5.3 of the 2019 agreement, nor clause 5.2.5 of the 2016 agreement on the days that he was absent from work. And Primo's intentions in that respect are, first, the higher duties clause was not as a matter of fact engaged on the days on which Mr Li was absent from work.

PN303

Second, and in the alternative, whether the employee, Mr Li, would have worked higher duties on the days he was absent cannot be determined in the absence of any contractual entitlement or standing requirement for the employee to undertake that work. And third, in any event the amounts payable under the higher duties clause do not comprise the employee's base rate of pay.

PN304

In Primo's submission the Commission can take notice of the fact that higher duties provisions are common in enterprise agreements and awards, and such provision is in clause 16.10 of the relevant underpinning award, The Meat Industry Award 2020.

PN305

THE VICE PRESIDENT: Sorry, what's the clause?

PN306

MR ASH: It's clause 16.10. The provisions in the agreement and the modern award provide that, 'If an employee performs the higher duties or less than the prescribed time they were paid at their ordinary classification.'

PN307

The contention of the applicant that the higher duties and mix functions clauses operate to fix an employee's base rate of pay should not be accepted by the Commission. The suggestion that the provisions allow the respondent to use them to avoid paying higher leave and public holiday entitlements to employees is like saying that any employer applying The Meat Industry Award 2020 would direct employees to perform higher duties for less than two hours on any day or shift to avoid paying the higher rate of pay for any hours worked by the employee.

PN308

The assertion by the applicant that there was a standing arrangement that Mr Li perform the job of quality checker every day was not the evidence of Mr Stephenson, and I don't think it was the evidence of Mr Li. The evidence discloses that the respondent had standard manning levels based on production volumes.

PN309

Primo has employees trained as back-ups in roles key to being able to run production lines. On the afternoon shift in the bacon slice room it has around 8 per cent of employees trained as back-ups.

PN310

That's from Mr Stephenson's statement, it's 8 out of 99.

PN311

Before each shift based on absenteeism the supervisor determines whether any back-ups are required to step up and directs them to do so as required. They may step up for a short time if an employee is late, or the whole shift.

PN312

It is relevant, in Primo's submission, that the relevant period coincided with the COVID-19 pandemic. Primo's operations were fortunate to be an essential service during that period. The evidence of Mr Stephenson was that absenteeism was often as high as 50 per cent during that period of time.

PN313

If the Commission is against Primo on its primary and secondary contentions or submissions that the higher duties clause was not engaged when Mr Li took paid personal carer's leave and was absent on a public holiday, and that it could be known whether he would have been required to perform higher duties, the Federal Court has considered section 16 of the Act in *Association of Professional Engineers, Scientists and Managers Australia v Bulga Underground Operations Pty Ltd* [2019] FCA 1960.

PN314

The case was concerned with determining an employee's base rate of pay for the purposes of calculating untaken long service leave on termination. The relevant long service leave statute applied section 16 of the Act. APESMA also sought declaration relating to the calculation of the base rate of pay of all of Bulga's employees covered by the enterprise agreement.

PN315

The employee in question's contract provided for a salary package described as a total employment compensation package expressed to be in lieu of all entitlements under an agreement, award or legislation, other than a shift roster allowance. Bulga argued that the salary was the employee's full rate of pay and not base rate of pay.

PN316

The court found that although the salary may have been in lieu of things in section 16 it did not include them, because it had a rolled up amount that wasn't anything that was separately identifiable. The court had to consider the definition of base rate of pay in section 16, and at paragraph 17 stated:

PN317

There is much to be said for the proposition that the general words 'separately identifiable amounts' in paragraph (e) should be read ejusdem generis with the specific types of payments or amounts referred to in paragraphs (a) to (d). It would follow that to fall within paragraph (e) the separately identifiable amounts must be of the same genus or have the same character as the payments or amounts referred to in (a) to (d). That genus would appear to be payments or amounts payable to an employee to compensate them for working beyond or outside the ordinary hours of work or to compensate them for working in specific circumstances, or for achieving specific outcomes, that otherwise warrant additional compensation or allowance. It would not include

payments to an employee for performing his or her ordinary hours of work or ordinary duties.

PN318

THE VICE PRESIDENT: But is Mr Li performing his ordinary duties when he's acting in a higher role?

PN319

MR ASH: No, Commissioner, his substantive classification during that relevant period was Level 2, and the evidence was that on any day or any shift, depending on absenteeism and production requirements of the employer, he may be directed to perform those higher duties that he's been trained in. There was a period of time outside the period in question when he was performing these higher duties less regularly.

PN320

There is also the offer that's made to him in January of 2021 to be permanently appointed to a Level 5 position, but he refuses. I understand Mr Li's evidence to be that it wasn't about the higher rate of pay, it was that he wanted to be a permanent QC, not a Multivac operator. Had he accepted that offer he would not have been paid less than Level 5 when he took a personal carer's leave and was absent on a public holiday.

PN321

But given the particular circumstances, the challenging circumstances that are referred to in Mr Stephenson's statement in relation to the absenteeism levels, and it not being normal levels of absenteeism, he was regularly directed to perform higher duties during that period of time. But at no point, in our submission, was it his base rate of pay.

PN322

He was paid a separately identifiable amount in accordance with clause 5.3 of the agreement, the 2019 agreement, and the relevant clause prior to that under the 2016 agreement. They're in the same terms other than the prescribed period of time being two versus four hours that an employee must work in those higher duties to be paid the higher amounts for the whole day or shift, similar to most higher duties provisions in most agreements and awards.

PN323

In Primo's submissions the higher duties or mixed functions provisions are clearly, in our submission, either an allowance, or at the very least a separately identifiable amount for the purposes of section 16, and can't just be taken to be fixing a rate as the employee's base rate of pay. Unless there are any further questions - - -

PN324

THE VICE PRESIDENT: No. I understand your submission. Thank you. Anything in reply, Mr Buckley?

PN325

MR BUCKLEY: The only thing I will say in reply is in reference to the authority that Mr Ash referred to when it talked about the separately identifiable amount

could not include an amount or payment for performing their ordinary duties. We say that as a matter of factual inquiry the quality checker job had become Mr Li's ordinary duties. That's all, Vice President.

PN326

THE VICE PRESIDENT: Okay. Thank you for your submissions. I will indicate that I will reserve my decision and issue it in due course, and on that basis I will adjourn.

ADJOURNED INDEFINITELY

[11.45 AM]

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