



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER BISSETT

C2022/8256

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
Opal Packaging Australia Pty Ltd T/A Opal Fibre Packaging
(C2022/8256)

Orora Fibre Packaging National Enterprise Agreement 2019

Melbourne

10.00 AM, FRIDAY, 25 AUGUST 2023

Continued from 28/06/2023

PN1

THE COMMISSIONER: Good morning. I'll take appearances. Mr Bonello, you're there?

PN2

MR A BONELLO: Yes, Commissioner, good morning.

PN3

THE COMMISSIONER: Good morning.

PN4

MR BONELLO: And with me is Ms Hogan and Mr Horan.

PN5

THE COMMISSIONER: Good. Thank you, Mr Bonello. And for the respondent I've got Ms Yuen?

PN6

MS C YUEN: Yes, good morning, Commissioner, and with me is my colleague Ms Singh.

PN7

THE COMMISSIONER: Good, thank you very much for that. The purpose of the hearing today is to hear the evidence of Mr Horan with respect to the application next week. I understand Mr Horan is going on leave and leaving the country soon and won't be available next week and I thank the parties for making themselves available today. I think it's much more preferable than trying to do it while Mr Horan is overseas.

PN8

The other thing, just before we get to Mr Horan: I understand from the advice provided by the respondent yesterday that next week Ms Cassan, Ms Debasia and Mr Bull won't be required for cross-examination. Is that correct, Ms Yuen?

PN9

MS YUEN: Yes, that's correct, Commissioner.

PN10

THE COMMISSIONER: Okay, and I think, Mr Bonello, the respondent has asked if you could advise on your requirements to cross-examine their witnesses?

PN11

MR BONELLO: Yes, Commissioner. We will advise that by close of business Monday if that is okay with yourself, Commissioner.

PN12

THE COMMISSIONER: Yes. Please make sure you do. Thank you.

PN13

MR BONELLO: We will, yes.

PN14

THE COMMISSIONER: Thank you. Okay, well, Mr Bonello, do you wish to call Mr Horan?

PN15

MR BONELLO: Yes, Commissioner. If we can call Mr Horan to give his evidence now.

PN16

THE COMMISSIONER: Thank you. Mr Horan, can you hear all right?

PN17

MR G HORAN: Yes. Yes, I can.

PN18

THE COMMISSIONER: Okay, thank you. I'll just have my associate swear you in.

PN19

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

PN20

MR HORAN: Grant Edward Horan, (address supplied).

PN21

THE ASSOCIATE: Thank you.

<GRANT EDWARD HORAN, AFFIRMED [10.04 AM]

EXAMINATION-IN-CHIEF BY MR BONELLO [10.04 AM]

PN22

THE COMMISSIONER: Mr Bonello, just before I hand over to you, can I just confirm – Mr Horan, you're in a room by yourself?

PN23

THE WITNESS: Yes, I am.

PN24

THE COMMISSIONER: Okay, and have you got any - - -

PN25

THE WITNESS: There's people – there's a corridor – people walking - - -

PN26

THE COMMISSIONER: Yes, okay. That's fine, thank you. Just wanted to check and make sure. Mr Bonello.

PN27

THE WITNESS: Sorry, I didn't hear that.

*** GRANT EDWARD HORAN

XN MR BONELLO

PN28

THE COMMISSIONER: No, I was just checking. That's all. I'll just hand you over to Mr Bonello now, okay?

PN29

MR BONELLO: Thank you, Commissioner. Mr Horan, if I can get you just to turn to page 23 of the court book, please? Just let me know when you are on that page?---I didn't hear anything after page 23. Okay, yes, I've got it.

PN30

Yes, and can I just confirm, Mr Horan, that pages 23 to 25 contain your witness statement that you have made in this matter?---Yes, that's correct.

PN31

Can I confirm it is 13 paragraphs long?---They're numbered? Yes, 13, yes.

PN32

Can I confirm that, to the best of your knowledge and belief, this witness statement is true and correct?---Yes, it's true and correct.

PN33

Commissioner, I'd like to tender the witness statement on pages 23 to 25 as evidence in this matter.

PN34

THE COMMISSIONER: Thank you. I'll mark the witness statement of Grant Horan dated 14 August consisting of 13 paragraphs as AMWU1.

**EXHIBIT #AMWU1 WITNESS STATEMENT OF GRANT HORAN
CONSISTING OF 13 PARAGRAPHS DATED 14/08/2023**

PN35

MR BONELLO: Thank you. Mr Horan, please if I can get you to turn to page 24 of the court book, paragraph 5? If I can get you, Mr Horan, just to further explain paragraph 5, please? I believe Mr Horan may have froze, it seems like - - -

PN36

THE COMMISSIONER: You there, Mr Horan? No. Is it possible to send him a text message? He's gone. Or he's turned his camera off, in any event.

PN37

THE WITNESS: No, it's frozen. I didn't hear anything.

PN38

THE COMMISSIONER: No, that's all right, Mr Horan. We worked out you'd frozen and we stopped.

*** GRANT EDWARD HORAN

XN MR BONELLO

PN39

THE WITNESS: I have another computer, maybe I'll try that. I'm having to use my phone because they didn't organise a Wi-Fi password for me. I apologise. Okay.

PN40

THE COMMISSIONER: Okay.

PN41

MR BONELLO: Commissioner, would you like me to proceed?

PN42

THE COMMISSIONER: Well, I'd like to see Mr Horan while he's being questioned.

PN43

THE WITNESS: Everything all right? Can you hear me fine?

PN44

THE COMMISSIONER: Yes, we can. Thank you, Mr Horan.

PN45

THE WITNESS: Sorry about that.

PN46

THE COMMISSIONER: No, it's all right. Okay, Mr Bonello.

PN47

MR BONELLO: Mr Horan, in your witness statement – please turn to paragraph 5 of your witness statement. Can you further explain this paragraph?---Paragraph 5, yes. When I came in to work that day, a couple of minutes after starting, Steve Hutchinson came over to me and said that I was required upstairs. And I said 'Who – what is it in regard to?' And he said, 'There – there's a matter to be discussed.' And I said, 'Who's in trouble?' And he said, 'You.' And I'm like, 'What?' And he said, 'Yes, you have to go upstairs.' And I said, 'I'm not going anywhere without union representation.' So he left, and then a couple of minutes later he came back to me and said again, 'You have to go upstairs.' And I said, 'What's it about?' And he said in relation to something I'd said to Jenny – Ms McLean. Didn't say anything else after that, and I said again, 'I'm not going upstairs without representation, this is not how it's done in the EA. I'm entitled to representation.' He's then said, 'If you don't go, you will be stood down.' So then I thought, well, I'll try and deescalate the situation, I'll go to the meeting. That's about it with regards to that. I mean, I've been to a few of these before with other people and even myself and we've always been given the opportunity to get representation and told so by the manager.

PN48

Thank you, Mr Horan. No further questions, Commissioner.

PN49

THE COMMISSIONER: Thank you. Ms Yuen?

GRANT EDWARD HORAN

XN MR BONELLO

PN50

MS YUEN: Thank you, Commissioner. Good morning, Mr Horan. I did want to ask you a few more questions about that 5 December meeting. So you've given some evidence that you proceeded upstairs and went to the meeting. Now, at that meeting was Mr Edwards and Ms Chew; is that right?---That's correct.

PN51

Now at the meeting - - - ?---Just those two people.

PN52

Yes?---Yes.

PN53

Now at the meeting, Mr Edwards did not introduce himself as a senior manager from HR in Sydney, did he?---Something to that effect. I don't recall. He said he was HR or – I mean, I – it was – by the time I had my statement, this is like a month later, or more than a month later. He did introduce himself in some way, I couldn't say what his exact words were. And Celia didn't introduce herself, I then said, 'And you are?' And Mr Edwards didn't introduce her, he just introduced himself.

PN54

Okay. So you're now aware that Mr Edwards' role is regional general manager VIC/TAS, aren't you?---Exactly what his role is, no. I don't know. I may have looked up at something – I mean, this has gone on for a long period of time.

PN55

I understand that, Mr Horan. Could I ask you to please turn to page – let me get you the right page?---I don't think he was – sorry. I don't think he was the manager of VIC/TAS at the time because Rick Delbon was the manager of VIC/TAS, I believe. That's also what sort of threw me, as well, is that why he wasn't dealing with the situation.

PN56

Thank you, Mr Horan. Could I ask you to turn to page 85 of the court book, please?---Right. Sorry, I wasn't expecting to go through this. I've only printed out my statement.

PN57

Do you have access to the court book? Perhaps - - - ?---Yes, yes, I do. I - - -

PN58

- - - on a laptop? Thank you?---Yes, I can look at my other laptop. Sorry. I just have to turn it back on again. I apologise, I haven't done anything like this on a video hook-up before.

GRANT EDWARD HORAN

XXN MS YUEN

PN59

THE COMMISSIONER: No, you're right. My associate can show it to you on the screen, Mr Horan, if that is easier?

PN60

THE WITNESS: It's a fairly small screen.

PN61

THE COMMISSIONER: Okay.

PN62

THE WITNESS: What page was it, sorry?

PN63

MS YUEN: Page 85 of the court book?---Okay, yes.

PN64

Thank you, and if I could ask you to just have a look at paragraph 5. So this is Ms Chew's statement and she's responded to what she has read in your statement. I'll just read it out to you. In paragraph 5, she says:

PN65

In relation to paragraph 6 in Horan's statement: I do not recall Justin Edwards introducing himself as HR from Sydney. It does not make sense to me that Mr Edwards would do so as his position is regional general manager VIC/TAS and he is based in Knoxfield, Victoria, not Sydney.

PN66

Mr Horan, do you have any reason to believe that Ms Chew's evidence is incorrect in terms of what Mr Edwards' role title actually is?---This has been written after – well after the fact. From when he introduced himself and then what we – I've then looked up – this is months and months later, as to what he – what his position was. So, at the time, I didn't realise what it was and that's reading off her statement which we've only just gotten the other day.

PN67

Sure. So my question is: is your evidence that Mr Edwards introduced himself with a false role title, or is your evidence that what you've said in your statement about how he introduced himself was actually not correct?---Well, what was he at the time? I mean, there's months have gone in between - - -

PN68

Ms Chew's evidence - - -?---No, no, hang on. And Mr Delbon has left the company, so he may well have been from Sydney and then Rick Delbon's gone and then he's taken over that position. I don't know.

PN69

Ms Chew's evidence is that his position at the time was regional general manager VIC/TAS?---Okay.

*** GRANT EDWARD HORAN

XXN MS YUEN

PN70

We take that on its face. Let's assume for the moment that Ms Chew's evidence is correct. Do you maintain your position that he introduced himself as a senior HR manager from Sydney?---I don't recall.

PN71

Okay. Thank you?---I mean, there's other bits of her evidence that aren't correct.

PN72

We'll come to that in a moment, Mr Horan?---Yes.

PN73

At the meeting, Mr Edwards said to you that there had been an allegation of misconduct and that a preliminary investigation had started, didn't he?---Something like that, yes.

PN74

At no stage did Mr Edwards say to you that it was a disciplinary meeting, did he?---I can't remember exact words that were said. Like – something like that. I mean, it's pretty obvious that when you're speaking with someone from HR and that there's an allegation of misconduct, it is a disciplinary meeting, is it not?

PN75

Well, that wasn't the question. What I put to you is that Mr Edwards did not say it was a disciplinary meeting?---Well, I'm pretty sure he did.

PN76

On around 23 December – so this was several weeks later, we were just talking about the 5 December meeting. Several weeks later on 23 December - a couple of days before Christmas – you attended a meeting which included Mr Edwards, didn't you?---Yes.

PN77

At that meeting, Mr Edwards told you that that meeting - the 23 December meeting - was a disciplinary meeting, didn't he?---Yes.

PN78

Is it possible that you might be getting confused between the 5 December and the 23 December meetings and the use of the word, 'disciplinary?'

PN79

MR BONELLO: No. We object to the question. The 23 December meeting hasn't been put into evidence and it's something that Mr Horan hasn't always been testifying against.

*** GRANT EDWARD HORAN

XXN MS YUEN

PN80

MS YUEN: Commissioner, we say that there is conflicting evidence in terms of what was said at the 5 December meeting by Mr Edwards and we are seeking to identify whether there is some confusion in terms of whether the words 'disciplinary meeting' were used that arose out of the 23 December meeting. It's

not really a matter of what happened in the 23 December meeting, but whether that meeting caused confusion in relation to the 5 December meeting.

PN81

THE COMMISSIONER: I'll allow the question.

PN82

MS YUEN: Thank you, Commissioner. Mr Horan, would you like me to repeat the question?---Yes.

PN83

The question was: is it possible that you have confused the 23 December meeting with the 5 December meeting, in that you've confirmed that Mr Edwards said at the 23 December meeting that it was a disciplinary meeting – is it possible that you've confused that in your recollection of the 5 December meeting?---No, it's not. The specific words, maybe. But no, it was very clear to me that was a disciplinary meeting and Steven even said that when I said that – he said that I'm the one in trouble and that that's going to be a disciplinary meeting, you have to attend it.

PN84

So you certainly – I accept you had an understanding it was a disciplinary meeting, but you can't recall the exact words, whether or not Mr Edwards said it was a disciplinary meeting, is that right?---I mean, I'd have to go back and look at notes. I – you know, I didn't realise we were going to be talking about this sort of stuff. No, but he – it was very clear what it was – what the whole meeting was about. I mean, how do you stand someone down if it's not a disciplinary meeting, as well. I mean, there's lots of other things that point to the same thing being exactly what it is. How can you stand - - -

PN85

Okay - - -?--- - - - someone down without it being a disciplinary meeting, you know?

PN86

But your evidence is that, without looking at notes, you can't confirm one way or another whether he used the words 'disciplinary meeting' in that 5 December meeting?---No, I'm not – I'm certain he did.

PN87

Thank you, Mr Horan?---As he – sorry, it was as he introduced himself. It was, 'This is a disciplinary matter in regards to the' - what was the words that he used? I'll make – I can't even remember exactly what the wording that you've just used (indistinct) -

PN88

That's okay, Mr Horan, we can move on to the next question. Now you're the AMWU delegate at the Scoresby preprint site, aren't you?---That's correct.

*** GRANT EDWARD HORAN

XXN MS YUEN

PN89

How long have you been a delegate for? Approximately?---15 – 18 years, maybe. On and off. I only spent a couple of - - -

PN90

From time to time in your years on and off as a delegate, you have had reason to put certain matters into dispute under the EBA, haven't you?---Yes, a couple of times.

PN91

The common practice when putting a matter into the dispute under the EBA is to say either verbally or in an email to the company representative, 'this issue is in dispute', isn't it?---Not always, no. We've had meetings where just the AMWU representatives come in and we have escalated things as per the procedures. There is nowhere in there that says you have to say 'we're in dispute.' There are other bits – there are other - - -

PN92

My question is not about - - -?---There are other - - -

PN93

- - - cause, my question is about the common practice. If you are letting a manager know that something is in dispute, I'm putting it to you that the common, most usual practice is to use the word, 'dispute' when telling the manager that.

PN94

MR BONELLO: Commissioner, we object to the question. Ms Yuen is deriving an opinion in her question.

PN95

THE COMMISSIONER: Perhaps we could stick to what this witness knows and his practices, Ms Yuen.

PN96

MS YUEN: Yes, Commissioner.

PN97

THE COMMISSIONER: I do accept, though, that he is a union delegate and a long-standing union delegate and obviously, I expect has a breadth of experience in the union matters in the workplace.

GRANT EDWARD HORAN

XXN MS YUEN

PN98

MS YUEN: Yes, I will rephrase the question, thank you, Commissioner. Mr Horan, in your experience as a union delegate over the last 15 or so years, on and off, when you have had need to put a matter into dispute, you have typically used the word, 'dispute' in raising the dispute with the representative of the company, haven't you?---No, that's not correct. Depending on what the matter was about. Sometimes where there was a huge imbalance in what peoples' opinions was, it was said. And there have been plenty of times where I have not used the specific words where we have just been following the disputes procedure as in the next section – the next process, after having spoken with a manager, we can't

come to an agreement, I've then gotten an organiser involved – excuse me – possibly even Lorraine Cassan involved in things, Katrina Ford previously. I would say that the practice is not normal that I've had to use the specific words, 'we're in dispute' because we've been quite obviously taking the steps required. Once again, I'll say that there's nothing that says that you have to say you're in dispute. By following the next steps, I think both parties are quite clear at preprint, in the past, that we are following the disputes procedure because we've escalated it to the next – the next person or the next stage of the argument, so to speak. So no, no, it's not normal for me to have specifically said, 'we're in dispute.'

PN99

Thank you, Mr Horan. Could I ask you to please turn to page 53 of the court book?---Sorry, 53 you said?

PN100

Yes?---Jesus Christ. Yes.

PN101

Now this is a file note that is attached to Ms Chew's witness statement and it is the file note that Ms Chew prepared in relation to the 5 December meeting that we were talking about just before. If I could ask you to please look at the second-last paragraph of that file note: Ms Chew records in that paragraph that at the end of the meeting you responded with, 'Yes, all right, no worries.' Did you say that at the end of the meeting?---No. No, I did not. Why would I say, 'Yes, no worries' when I've been stood down? No worries - - -

PN102

I'm not asking why, I'm asking did you and you've answered the question?---No, no. I'm saying no. No, I did not.

PN103

Thank you. So, your - - -?---And the explanation as why I would not is because it wasn't no worries - - -

PN104

No, no. Mr Horan, Mr Bonello will have a chance to re-examine you afterwards. If you could please answer my questions for the moment?---Yes.

PN105

And Mr Bonello may have further questions for you after. You said before your view is that Ms Chew's file note is not accurate, do you stand by that view?---That's correct.

PN106

On that topic, you will see that Ms Chew's file note does not refer to you saying anything else in the meeting. Yet, in your witness statement that we were looking at just before, you say that you disputed to them that this was not the correct process that should be taken under the agreement?---That's correct.

*** GRANT EDWARD HORAN

XXN MS YUEN

PN107

Now - - -?---Sorry, sorry, words to that effect. I don't have it in front of me. Yes.

PN108

Would you like to turn to that page, Mr Horan? Would you feel more comfortable if you looked at it before I ask my next question? It is on page 24 of the court book?---Yes, right. Yes, I have that.

PN109

Mr Horan, in fact, at the 5 December meeting you did not say anything about a dispute, did you?---I said that this was – hang on, which bit are you referring to? Which line?

PN110

I'm referring to – on page 24, paragraph 8 of your witness statement?---No, I did. I butted in because Mr Edwards was just talking and I said, 'This is not the correct process because I'm entitled to a representation.' And then he butted back in and just said, 'Let me continue.' I'm like, 'Okay.' Because – well, because I butted in, and that's when he stood me down. They didn't give me any opportunity to speak about anything.

PN111

But you didn't use the word, 'dispute' in that meeting, did you?---Dispute, no. No, I said, 'This is not following the correct-' well, I said, 'disputes procedure in the' you know, the – because I'd already said to Steven, 'I mean, I'm not going to go to the meeting.' They've then threatened me with being stood down and I said to him, 'This is not' I can't remember the exact words off the top of my head right now. But I said to Steven, 'You know, under the EA, this is not following the correct procedures, so-' - - -

PN112

Steven, or Mr Hutchinson, wasn't in the meeting that subsequently occurred upstairs, was he?---No, that's correct, and that's also why these notes are not correct, because she's talking about things that weren't said at the meeting, things that were done not at the meeting. The meeting had already finished and yet she's done things. It's not even on the correct form.

PN113

So let's - - - ?---I was – I was not given a copy of these notes - - -

PN114

Mr Horan, as I've said, Mr Bonello will have a chance to ask you further questions immediately after this - - - ?---You did – you did ask me what's incorrect and I'm telling you what's incorrect.

PN115

All right, let's just go back and focus on the 5 December meeting with Mr Edwards and Ms Chew. I'm not asking questions about discussions with Mr Hutchinson. In the 5 December meeting upstairs with Mr Edwards and Ms Chew you did not say anything about a dispute, did you?---Yes, I did.

PN116

Okay, and in that meeting, in fact, you did not say anything about the correct process under the agreement, did you?---No, I did say because they were taking me up there without me having representation and that's what I said.

PN117

So you maintain - - - ?---And then he – and then I couldn't speak any further to that because he cut me off and said, 'Look, let me just finish' what he was saying. And I said, 'Okay, fair enough.' Well, I didn't say, 'fair enough' but I allowed him to continue speaking, and then that was the end of it. There was no opportunity to take anything else – sorry, speak anything else.

PN118

Mr Horan, I put it to you that Mr Edwards did not say to you, 'Just let me finish this.'?---What do you mean?

PN119

I'm suggesting to you that Ms Chew's file note is actually correct - - - ?---No.

PN120

- - - and I'm asking - - - ?---No, no, no, no, he did. He said that, because I butted in and started talking to him, and then he said, 'Look, just let me finish' what he was – the process that he was doing. So yes, that is correct.

PN121

So you - - - ?---What I – sorry - - -

PN122

Excuse me, Mr Horan. You maintain that Ms Chew's file note is not accurate in terms of the 5 December meeting?---That's correct. Well, some of it is, obviously. I was there, things were said, but as a whole, no it's not. There are things that are not correct.

PN123

Thank you, Mr Horan. If I could ask you to turn to page 25 of the court book, please?---Is that still part of my witness statement?

PN124

It is, it's the last page - - -?---Yes.

PN125

- - - of your witness statement?---Yes, yes. Just checking.

PN126

At paragraph 12, you say that you were very confused after the meeting; is that correct?---Yes.

*** GRANT EDWARD HORAN

XXN MS YUEN

PN127

Is it possible that your confusion has affected your memory of what happened in the 5 December meeting?---No. What I was confused about was what the

allegation was because they didn't say what the allegation was. Just that it was misconduct. They didn't say that it was with – I don't know – whether it was - - -

PN128

That's okay - - - ?---Jenny – they didn't say it was Jenny, they didn't tell me when it was, what it was, what was said, nothing. I wasn't given a copy - - -

PN129

That's okay, Mr Horan - - - ?--- - - - wasn't given the opportunity to - - -

PN130

- - - all I wanted to put to you was – and you've answered the question, so I appreciate that?---Sorry.

PN131

I have no further questions. I wish you all the best for a lovely holiday. That's all I have, Commissioner. You're on mute, Commissioner.

PN132

THE COMMISSIONER: I was coughing, so I wanted to mute myself. Mr Bonello.

PN133

MR BONELLO: Commissioner, we have no further questions for Mr Horan. Please release the witness.

PN134

THE COMMISSIONER: Thank you. Mr Horan, you are excused and I do hope you have a lovely holiday.

PN135

THE WITNESS: Thank you very much.

<THE WITNESS WITHDREW

[10.39 AM]

PN136

THE COMMISSIONER: Okay, well, that's all for today. I will adjourn until 10.00 am on Thursday 31 August in Melbourne and Mr Bonello, you'll provide that advice to Ms Yuen and to my chambers by close of business Monday at the latest.

PN137

MR BONELLO: Yes, Commissioner. Thank you.

PN138

THE COMMISSIONER: Good, thank you. There's nothing else?

PN139

MS YUEN: No, Commissioner.

*** GRANT EDWARD HORAN

XXN MS YUEN

PN140

MR BONELLO: No, Commissioner.

PN141

THE COMMISSIONER: Thank you. We'll adjourn.

ADJOURNED UNTIL THURSDAY, 31 AUGUST 2023

[10.40 AM]

LIST OF WITNESSES, EXHIBITS AND MFIs

GRANT EDWARD HORAN, AFFIRMEDPN21

EXAMINATION-IN-CHIEF BY MR BONELLOPN21

**EXHIBIT #AMWU1 WITNESS STATEMENT OF GRANT HORAN
CONSISTING OF 13 PARAGRAPHS DATED 14/08/2023PN34**

CROSS-EXAMINATION BY MS YUENPN49

THE WITNESS WITHDREWPN135