



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**VICE PRESIDENT ASBURY**

**AM2023/30**

**s.158 - Application to vary or revoke a modern award**

**Application by [REDACTED] and others**

**(AM2023/30; AM2024/1; AM2024/2; AM2024/3; AM2024/4; AM2024/5; AM2024/7)**

**Rail Industry Award 2020**

**Brisbane**

**11.00 AM, FRIDAY, 23 FEBRUARY 2024**

**Continued from 15/01/2024**

PN125

THE VICE PRESIDENT: Thank you. Good morning. Could I just start by confirming the appearances. For the applicants, who have I got? I've got a number of you there.

PN126

MR [REDACTED]: [REDACTED] here.

PN127

THE VICE PRESIDENT: Yes. Maybe if I go through them. We've got Mr [REDACTED], [REDACTED] - - -?

PN128

MR [REDACTED]: Yes, I'm here.

PN129

THE VICE PRESIDENT: Mr [REDACTED]?

PN130

MR [REDACTED]: I'm here.

PN131

SPEAKER: (Indistinct)

PN132

THE VICE PRESIDENT: Okay. So we've got – as I understand it, we've got [REDACTED], are you there? Okay, unable to attend. [REDACTED]?

PN133

MR [REDACTED]: Correct.

PN134

THE VICE PRESIDENT: Thank you. And the applicants that are proceeding with the matter are [REDACTED], Mr [REDACTED] and Mr [REDACTED], as I understand, and we've also got several new applicants, being [REDACTED]?

PN135

MR [REDACTED]: That's correct.

PN136

THE VICE PRESIDENT: We also have some interested parties. Ms Bhatt, you're there?

PN137

MS R BHATT: Yes, I am, Vice President. Thank you.

PN138

THE VICE PRESIDENT: Thank you. And we've also got Ms Connor - - -?

PN139

MS R CONNOR: Yes.

PN140

THE VICE PRESIDENT: From AIG, thanks. And from the RTBU?

PN141

MS M DAVIS: Good morning. Minna Davis from the Australian Rail, Tram and Bus Industry Union.

PN142

THE VICE PRESIDENT: Thanks. And also Mr Aldridge?

PN143

MS DAVIS: Yes, that's correct.

PN144

THE VICE PRESIDENT: Now, I've looked at some of the material that has been provided. Perhaps you can assist, any of the applicant parties, because we were wanting to get some information about the employers in this industry that may be affected by this application so that Ms Bhatt would take some instructions. Ms Bhatt, do you understand that that information is being provided?

PN145

MS BHATT: Vice President, in the material that was uploaded to the Commission's website, as filed by the applicants since the last occasion that we appeared before you, on the final two pages there are some 22 organisations that have been identified by the applicants as purportedly employing protection officers. As I understand it, that's how they're characterised or described.

PN146

THE VICE PRESIDENT: Yes.

PN147

MS BHATT: And that list has enabled us to initiate a process of consultation with our membership, and on that basis I am in a position to advise today that we do have a relevant interest in the matter. The Vice President will recall that on the last occasion I indicated that that was really the main reason why we were seeking that information at this stage.

PN148

THE VICE PRESIDENT: Yes.

PN149

MS BHATT: It appears that we will have members who are potentially impacted by these applications, and so on that basis we will seek to be heard in relation to the matter if the applications are pressed.

PN150

THE VICE PRESIDENT: Okay. Thanks for that.

PN151

MS BHATT: Yes.

PN152

THE VICE PRESIDENT: From the RTBU's perspective, are you likely to seek to be heard in relation to the matter?

PN153

MS DAVIS: Thank you, Vice President. It really depends on how the application is pressed and how it evolves. Therefore, at this stage the RTBU suggests that it perhaps will be likely that we might seek to be heard. However, on the alternative, it might not be necessary from our position.

PN154

THE VICE PRESIDENT: Well, as I understand it, the applicants maintain the position that the classification definitions in the award don't clearly describe what they do. They want to know where they're classified under the award, and so what stream they're in so that they can understand whether they have a career path and on what basis they can progress through the classification structure. Does that basically reflect the applicants' position?

PN155

MR [REDACTED]: Yes, that's definitely part of it. Also we think that we're not clearly or correctly classified to all of our duties, and if that is found to be the case to have those additional duties and responsibilities properly classified.

PN156

THE VICE PRESIDENT: Okay. Really the issue is the award only sets the minimum rates. That's all it can do. So what we can deal with in the award and in any application to vary the award is where you sit within the classification definitions and whether they appropriately describe the work that you're doing, and as I understand it, your issue is that the classification definitions – it's not clear where the work that you're doing sits in those classification definitions and that they properly describe that work.

PN157

MR [REDACTED]: Yes. So we're not properly described, and the definitions that do exist don't completely cover our duties.

PN158

THE VICE PRESIDENT: Okay. What do the employers say about that proposition, Ms Bhatt? If that is the case, then what do the employers propose, or if it's not the case, do you say that the award appropriately describes the work that these employees are doing, or is it a matter that needs to be addressed, from your perspective?

PN159

MS BHATT: I think, Vice President, that the response to that question is necessarily somewhat nuanced. Can I try and explain it in this way? In some circumstances, protection officers might be employed by employers who are in the rail industry as defined by the award, and that's really the first question to assessing their award coverage: are they employed by an employer who falls

within the industry definition for that award - because it is an industry award, not an occupational award.

PN160

If the answer to that question is yes, then that's where this question arises as to whether the classification structure contemplates their role, their responsibilities and their duties. That's said in question - - -

PN161

THE VICE PRESIDENT: Sorry to interrupt you, but is that the end of the matter, because the award also covers any employer which supplies labour on an un hired basis to a rail transport operator. So whether they're in the industry or not is not determinative of whether the award covers employees surely.

PN162

MS BHATT: There will be, I envisage, a category of employers who are labour hire providers who are providing labour to the rail industry, and as the Vice President points out, there's been a question about, well, you know, are they covered – are those employers covered by the Rail Award.

PN163

It seems to us that what is quite clear though, based on some of the discussions we've had, is that at least some employers who employ protection officers are not in the rail industry, and they're not labour hire providers providing labour to the rail industry.

PN164

They are providing a service to the rail sector, and those employers potentially belong in a different industry, for example, they might be organisations that undertake civil contracting activities and therefore there might be a different award that covers them, a different industry award, and then the question of course becomes whether protection officers fall within the classification structure of that award, which is why I said from the outset that it is to some degree a complex question and one that has a nuanced response.

PN165

I'm not in a position to definitively say today what our views are in respect of the classification structure of the Rail Award, or any other award for that matter.

PN166

The other point I wanted to raise is that, in a practical sense, it seems to us that at least some of the organisations employing this category of employees have enterprise agreement in place, which, you know, just in a practical sense might obscure the question of award coverage, or, you know, there's just a few additional steps that have to be taken to make that assessment.

PN167

So we're still working through all of that, but it seems to us that the Rail Award is not going to be the only award that's potentially at play.

PN168

THE VICE PRESIDENT: So essentially from that, can I gather that you feel that it's important that the employers that we're dealing with here are identified?

PN169

MS BHATT: Well, I think – I'm sorry, Vice President – did the Vice President ask me about employees or employers?

PN170

THE VICE PRESIDENT: No, employers, because if you're having to argue that some of them are not properly in the rail industry or they don't provide labour on hire to the rail industry, that they're in fact in civil construction or some other industry, then surely it's going to be necessary to identify the employers we're dealing with, isn't it?

PN171

MS BHATT: It might be, and I think that that would be a question that we need to grapple with, that is, if the applications are dealt with in the customary way, that is, if the Vice President, for example, issues directions for the filing of material in relation to the matter, then we wanted to grapple with whether there's a need for us to call, for example, evidence from particular employers, who necessarily have to be identified, and they might then give evidence about their operations, about what industry they operate in, and there might be submissions we then make about their award coverage and the award coverage of their employees, and, you know, that would necessarily require them to be identified, if we go down that path.

PN172

THE VICE PRESIDENT: What - - -

PN173

MS BHATT: I think what is clear from – I'm sorry, I've interrupted you.

PN174

THE VICE PRESIDENT: Go on.

PN175

MS BHATT: I think what is clear from all of this is that there will be a threshold issue that will need to be dealt with in these proceedings as to whether these employees, people from the kind of work that is described in the material filed by the applicants, whether they are already covered by an award, and if so, which one, and then there might be a secondary question as to whether that is appropriate, whether it's appropriate that that award covers them, and whether that award provides terms and conditions that provide a fair and relevant minimum safety net for those employees.

PN176

And as the Vice President has pointed out, that is obviously one of the arguments that we would make, that awards are only a safety net. They provide for safety net terms and conditions, not actual terms and conditions.

PN177

THE VICE PRESIDENT: Yes, but employees should be able to know what the safety net is in respect of their employment, and if these employees are being told we'll get back to you, we don't know what award covers you, or they just are not clear on what award covers them, then I don't know how they can be said to have a safety net.

PN178

I mean, how do you see this matter progressing, Ms Bhatt, because somehow we have to determine a way forward? So what does the AIG have to say about how the matter can progress, or should progress?

PN179

MS BHATT: On one view, Vice President, you might issue directions that require, firstly, the filing of any further material from the applicants that they wish to rely upon, and of course ultimately it's a matter for them whether they want to file anything further than what they have already put on.

PN180

We would say though that when issuing any such direction, the Commission should require the applicants to very clearly articulate precisely what changes they say should be made to the Rail Award.

PN181

One of the reasons I raise that issue is because changes to the coverage of an award or the classification structure of an award would necessarily carry with them an inherent risk that they might give rise to other broader inadvertent implications, and an administrative body of our nature would necessarily also be concerned about those sorts of issues.

PN182

The other thing I would say about that is that various applicants, in addition to this issue of coverage, have also identified that they're seeking changes to substantive terms and conditions. I think we need to know very clearly what they are.

PN183

Typically it's the case that the Commission requires applicants to file a draft determination, and we would say that that sort of direction should either be issued here or at the very least some form of words that we can then respond to and aim at in our material in response.

PN184

So that would be the first step, and then we would ask for a period of no less than eight weeks to file material in reply. We envisage that we will need to consult further with potentially impacted employers before we can prepare our material.

PN185

THE VICE PRESIDENT: Okay. Thanks for that. What does the RTBU have to say, Ms Davis, about this? I mean, the applicants are saying we don't think an award that the RTBU is involved with - we don't think that this award properly describes the work that we're doing, or fully describes the work we are doing, or

properly recognises where we fit in the classification structure. So what does the RTBU have to say about that?

PN186

MS DAVIS: The RTBU's position has – we've always been an advocate that we think that, you know, when there was the creation of the modern awards, while they absolutely were there as a safety net for terms and conditions, of course when the amalgamation happened of numerous awards of course they weren't in a position to purport to cover every single duty that existed for various roles.

PN187

However, in my experience, traditionally a protection officer, or safe working duties that have existed in a different capacity than the job of a protection officer that currently exists today, historically fell within the ambit of the civil infrastructure stream that currently sits within the Rail Award.

PN188

Of course I wanted to note that there's of course consistent problems with the membership, you know, stating that the award does have some deficiencies in explaining the duties that one may take in the most easy approachable or digestible information, and the RTBU's always been an advocate that perhaps, you know, award changes should be made, but currently we don't purport to advance a proposition, or a view at the moment, about what those changes might look like that is present in the application by the applicants.

PN189

THE VICE PRESIDENT: Well, if the applicants want to press their application, then it's the award that you're the union that has the most involvement in, so I guess it's a matter for you whether you want to get involved in this. Because it would seem to me that if there's a group of workers saying we don't think this award adequately covers this and we're pressing forward with an application, then it'll affect the interests of your members and the RTBU, but I guess that's a matter for you to consider.

PN190

MS DAVIS: Absolutely, Vice President. If the applicants press the application, which it seems is the position, the RTBU will of course ensure that we are involved as much to ensure that no unintended consequences happen through the progression of this matter.

PN191

THE VICE PRESIDENT: Well, what other options do the applicants have but to press their position?

PN192

MS DAVIS: The RTBU – some of the applicants are RTBU members, and I have spoken to them about the application and what legal tests are required for a substantial variation that they've proposed.

PN193



I think based on elements of the crux of their issues, I've advanced a view that perhaps a discussion with their respective employers about what in fact are their purported – what classification that they are putting in place that they think those members are characterised under. I think there is some miscommunication between the employer and exactly what rate of pay or classification that those employees are directed to work under.

PN194

But, look, I understand that it's the applicants' application, and if they want to press with these changes, that's absolutely their right to do.

PN195

THE VICE PRESIDENT: Look, I guess I just want to make it clear to the applicants, if what you're here to argue is we shouldn't be at this level of the award, we should be at that level of the award, this is not the place to argue that.

PN196

MR [REDACTED]: It's not so much that it's we should be at this level, we should be at that level, that is part of it, but it's also because the award doesn't accurately define us, and we have - - -

PN197

THE VICE PRESIDENT: All right then - - -

PN198

MR [REDACTED]: - - - (indistinct).

PN199

THE VICE PRESIDENT: Okay. Then you will need – do you understand, to progress this matter you will need to put forward a document that's a draft determination that says this is what the award currently says and this is what we think it should say?

PN200

MR [REDACTED]: Yes, I have a question with that. How am I supposed to say this is what the award says that we're covered under if we can't get that answer even from our own employer?

PN201

THE VICE PRESIDENT: No, you should – what you need to say is here's what the award says, and it should say this – so we think we fit here, and these words need to be added to the award so it's clear that we fit there.

PN202

And frankly, I don't know how we can ever progress this matter if we don't even know who your employers are, or you're reluctant to have that information in the public realm, because if you want an answer to your question as to what I'm covered by, then really your dispute is with your employer, and you can file a dispute in the Fair Work Commission and say to your employer I'm not satisfied you've given me proper information, I don't have a pay slip that says what award covers me and what my classification under that award is, and I'm in dispute about

that and I want you to rectify it, and then if that's not rectified you come to the Commission under the dispute settlement provisions.

PN203

What you're applying to do is vary the award. So what you need to show is it currently said this, and we think it should say that.

PN204

MR [REDACTED]: I did include in that last piece of information that I emailed off to you some of the roles that cover us that are in the current award, but I can expand upon that, and we did include in our own words in the section in there what we consider that we do, but a lot of those are not included in the award. So some of that information has been provided, and we can redo that and - - -

PN205

THE VICE PRESIDENT: It's not a matter of just – sorry to interrupt you, but it's not just a matter of telling us what you do and sending in definitions. What you have to do is go to the award definitions and say this is what we think they should say - instead of what they say, they should say this.

PN206

MR [REDACTED]: Well, like I said, I did go through the awards and I pulled out the exact wording. I copied and pasted it from what you have that partially defines what we do, and there is extra roles in there, and we could have an attempt at putting them together for you, for what we do in terminology that you guys might appreciate a bit better and resubmit that to you, if that's what you're asking.

PN207

THE VICE PRESIDENT: As I understand it, a list of tasks, procedures and requirements required by Safe Work personnel protection officer.

PN208

MR [REDACTED]: So we put it in three formats there. We took a lot of the roles and duties that was available from various network's rules and procedures, including Rail Safety Act, Safe Work Australia, and ARTC, because they gave the most information.

PN209

We also then put down terminology that you guys, like I said just before, that is in the awards that partially covers us but not completely, and then we put down additional roles of our own that we thought, in our own words, into that document. So we can try and resubmit all that information again in more kind of award-style terminology if you like, but that's essentially - - -

PN210

THE VICE PRESIDENT: No, but what you need to do is – the union says the closest stream in the award to what you do is the technical and civil infrastructure classifications, okay, which are in the appendix to the award that describe – Schedule A Classification Definitions, and there is a technical and civil infrastructure stream, if you like.

PN211

MR [REDACTED]: Yes. So that's not entirely correct. So what happened in 1996 when they made those awards, POs were essentially employed – well they were employed as something else, like an electrician or a labourer, and they've done those roles part-time. So they were classified under that infrastructure role because of the duties they'd done predominantly, and right now when we go out, our infrastructure role is probably the least in comparison to the other two.

PN212

THE VICE PRESIDENT: So you're saying that what you're doing should be under another stream? What stream do you say it should be under?

PN213

MR [REDACTED]: Well, we take duties out of both administration and operations fairly heavily, and the closest one that represents us is the safe working operations in level 6 operations - I mentioned this last time - and that they're safety critical operations. But we do work from all three streams, and this is what I'm trying to say.

PN214

We're spread across all three streams and it's not uniquely classified to us, which is strange because we are a minimum requirement, like no one else can come in and do work unless we're there. So you'd think if it's a safety net and a cover-all, it should be covering the bare minimums, and we're at bare minimum required.

PN215

THE VICE PRESIDENT: But when are the circumstances in which you go out and do your role? Is it where there's going to be work done on the network, on the rail network?

PN216

MR [REDACTED]: It's anything inside the rail corridor. So regardless of if it is on the rail itself or in between the fences that define the rail corridor, they require a protection officer. So everything, except for (indistinct) - - -

PN217

THE VICE PRESIDENT: Yes, but they require a protection – are you saying that they require a protection officer when there are people on the network doing work?

PN218

MR [REDACTED]: Aside from station managers and people that are working actually in the trains, like train drivers and that, yes, they are required.

PN219

THE VICE PRESIDENT: Yes, but what – I'll try this again. Traditionally when people are out working on tracks, they're doing track work, they're repairing signals, they're doing maintenance, they are clearing lines because there's been storm, flood, tempest, whatever, you require rail protection.

PN220

MR [REDACTED]: Absolutely.

PN221

THE VICE PRESIDENT: Now, are you saying it's required in more circumstances than that? When is your work done? Is it done while people are doing work on the network?

PN222

MR [REDACTED]: At all times.

PN223

THE VICE PRESIDENT: Because it's best done - - -

PN224

MR [REDACTED]: It's at all times. So we have to be first in, last out. Like, if they want to do something even off track, like put up a power pole or something, we're required for that too. It's not too (indistinct) - - -

PN225

THE VICE PRESIDENT: If a train is – let me try this one last time. If a train is driving from point A to point B on the rail network, and there's nothing wrong with the rail network and no work is being done on it in any part of the network where the train is operating, do you have a protection officer engaged in working in those circumstances?

PN226

MR [REDACTED]: No. As I said before, we're not required for the people working inside the trains.

PN227

THE VICE PRESIDENT: So you're required when people are working outside the trains doing something in connection with keeping the network running?

PN228

MR [REDACTED]: Yes, and there is other services that run through the rail corridor, and we're required for that too, like, an example, it'd be someone like Telstra.

PN229

THE VICE PRESIDENT: Yes. So if Telstra needs to come and work on the rail network or in its vicinity to fix some of their facilities, you're required?

PN230

MR [REDACTED]: Yes.

PN231

THE VICE PRESIDENT: Okay.

PN232

MR [REDACTED]: Or some of – yes, with – I think it's comparable.

PN233

THE VICE PRESIDENT: I struggle with the proposition it's not technical and civil infrastructure classifications, that's the starting point, because you don't just go out on the network and do something when nothing's happening, except a train is driving from A to B with people inside the train. So when you're out on the network working, there's something being done that puts the people doing that work in potential danger that you need to prevent from occurring or warn them about or whatever?

PN234

MR [REDACTED]: (Indistinct) - - -

PN235

MR [REDACTED]: May I interject, please?

PN236

THE VICE PRESIDENT: Yes.

PN237

MR [REDACTED]: There are on occasion times where we do need to attend within a train to do a visual inspection of where we need to go for our works to be undertaken in the rail corridor for work that requires us and personnel - - -

PN238

THE VICE PRESIDENT: [REDACTED], I'm not going to sit here endlessly. The proposition I'm putting to you is that rail protection officers are engaged when a train is doing some – it's to protect people working on the rail network where there is some issue: there's an electricity line down, there's blockage on the network, there's trackwork that needs to be done, there's something that is going to put people who are not driving the train and passengers in the train in danger, potential danger because they're doing work on the network; that's why you're there - that's the purpose your work, isn't it?

PN239

MR [REDACTED]: We're there for anything - - -

PN240

MR [REDACTED]: (Indistinct) - - -

PN241

MR [REDACTED]: - - - inclusive of what you said, as well as the investigations that are well away from track but still within the corridor boundaries.

PN242

THE VICE PRESIDENT: Yes, I understand that, Mr [REDACTED], but you're not sitting in an office looking at machinery, or looking at a computer and typing information into it; you're out looking at what's happening on the network, aren't you?

PN243

MR [REDACTED]: Many of the POs do carry iPads for all their administration side of things, and most – some still carry paperwork. So there is that (indistinct) - - -

PN244

THE VICE PRESIDENT: Okay. Let's not discuss this any further, because I just feel like we're going round and round in circles. What you need to do is come up with – I'm going to send you an example of a draft determination, and you need to file a document that says the award currently says this and we say it should say that. So don't send me a big, long list of things. Send me a document – do you know how to do track changes?

PN245

MR [REDACTED]: Vice President, this is [REDACTED]. I understand what you need and we will get that to you in short order. Thank you very much.

PN246

THE VICE PRESIDENT: Okay. Is there any capacity for you to have a discussion with the RTBU to assist you to prepare this material? Because otherwise they're going to be able to turn up and say this is our award and they're doing something to it that we don't think is appropriate, and it's only going to extend the matter.

PN247

So is there any capacity for you to talk to the RTBU about what you want and why you want it, and see if some of you are members, and the RTBU, as I understand, has extended an offer to assist you in any event?

PN248

MR [REDACTED]: Vice President, we will - - -

PN249

MR [REDACTED]: We have done that on multiple occasions.

PN250

THE VICE PRESIDENT: I'm sorry, go on.

PN251

MR [REDACTED]: I said we already have done that on multiple occasions.

PN252

THE VICE PRESIDENT: So is the answer to my question no, I don't want to talk to the RTBU?

PN253

MR [REDACTED]: No. My answer to the question is we have a system to meet with them, and we have met with them already on multiple occasions, at least myself and two of the other applicants.

PN254

THE VICE PRESIDENT: All right. I'm going to give you two weeks to file that document, the draft determination at least that you're seeking.

PN255

MR [REDACTED] Yes.

PN256

MR [REDACTED]: Vice President, this is [REDACTED]. I understand the request, and we will have to you within the two-week deadline. Thank you very much.

PN257

THE VICE PRESIDENT: Okay. Well, if you understood what was required, [REDACTED], I don't know why you haven't done it, but in any event, let's try and move this forward.

PN258

So you've provided a list of the employers. Now you're going to provide a draft determination in terms of what you want the award to say, and then we will need to look at potentially whether another award could cover a particular employer, because – Ms Bhatt, again, I'm struggling with how an employer who provides rail safety officers – if the rail operator operates the network, and if your members are providing rail safety officers to undertake work on the network, who are they contracted with if they're not contracting with the rail operator?

PN259

MS BHATT: I think in some cases they might be labour hire providers, in which case the provision that the Vice President took me to earlier in the Rail Award would likely mean that they are covered by the Rail Award, but there are, we think, other situations in which employers who are in other industries and employ protection officers and then provide a service to employers in the Rail Award - they're not providing labour, they're providing a service, and then those employers are not in the rail industry as defined by the Rail Award, so their employees simply can't be covered by the award.

PN260

THE VICE PRESIDENT: If they're providing this service, what is the service besides the provision of rail safety operators? So the fact that they're doing it via another entity, between them and the rail safety operator, I don't know, changes the equation, but in any event, I'll wait to see what the submission might be. I think - - -

PN261

MS BHATT: (Indistinct)

PN262

THE VICE PRESIDENT: - - - (indistinct) have contracting to a subcontractor and providing rail safety officers. I don't know if it changes the matter, because if the ultimate responsibility on the network is the rail safety operator, well isn't that the end of it?

PN263

MS BHATT: I think a starting point will be the character of the employing entity: who is the employer; are they providing a labour or are they providing a service, and if it's the latter then what industry are they in. Are they in the rail industry as defined by that award? If yes, the employees might be covered by the Rail Award. If no, the employees can't be covered by the Rail Award, and then we have to look to other awards.

PN264

I think that once we have the material that the Vice President has just directed the applicants to file, it might help us then to consult further and get some clearer answers on some of these issues. As I think the Vice President will appreciate, in the time since the last directions hearing we've really only had scope to have what I would describe as preliminary discussions with some of these employers. They've by no means been exhaustive.

PN265

THE VICE PRESIDENT: Okay. I mean, if they're providing this service in the form of rail safety officers coming on the network and doing work, well I – anyway, let's see what the draft determination is.

PN266

So from the date of the draft determination, you want eight weeks?

PN267

MS BHATT: That depends in part on whether the applicants propose to file any other material or the Commission is proposing to give them an opportunity to do so, but if the answer's no, then yes, a period of eight weeks.

PN268

THE VICE PRESIDENT: What other material would you be seeking besides the draft determination? Witness statement, what? Because I just think asking them to keep filing material – once you get a draft determination, why do you need eight weeks? You've got this is what they say the award should say. What impact will have that on your members?

PN269

MS BHATT: Yes. I mean, firstly, whether the applicants are directed to file any further material or whether they seek to do so is of course a matter for the Commission and for the applicants. We're not seeking any further material as such.

PN270

The reason for asking for eight weeks, Vice President, is because I think as the discussion today has borne out, these issues are complex, and the position of different employers who employ these employees might be subtly different. There will be questions as to appropriate award coverage that have to be worked through, as well as more substantive matters such as what are the terms and conditions that should apply to them.

PN271

I mean, as I understand it, some of these applicants are asking for specific rates of pay to be prescribed in the award for their role, and they differ from the current minimum rates that might apply. There will be I think - - -

PN272

THE VICE PRESIDENT: (Indistinct) - - -

PN273



MS BHATT: - - - a broad scope of material that has to be worked through, or proposals that have to be worked through.

PN274

THE VICE PRESIDENT: Well, I'm going to give the applicants their two weeks to file the additional material, being the draft determination and anything else they want to file, and if you want higher rates then you need to say so.

PN275

You need to file a draft determination that says this is what the classification definition should say and this is what we say the rates should be, so people can see what it is you want to do to this award, because that's what this is about, okay. You've applied to amend an award, and the employer parties - they're entitled to know exactly what changes you're seeking to make in the award. Is that clear?

PN276

MR [REDACTED]: Yes, that sounds fine.

PN277

THE VICE PRESIDENT: When that material's received, I'll list the matter – I'll give you a couple of weeks to digest it, Ms Bhatt, and then I'll list the matter, but if it's a straightforward draft determination, I don't see why you need eight weeks from then, and I suggest you use that two weeks to start talking to your members about it, because I want to bring this matter on for some kind of hearing to try to get to a conclusion.

PN278

MS BHATT: Yes, Vice President. Thank you.

PN279

THE VICE PRESIDENT: Thanks for that. On that basis – are there any other matters the applicants wish to raise or ask about?

PN280

MR [REDACTED]: That's a no from me at the moment. I just do want to say, I wanted to say thank you for redacting our information again, because some POs I have spoken to about joining us on the issue have been told they have been, and I quote, 'threatened at gunpoint', which I believe is a euphemism. So I'd just like to say thank you for redacting our information again.

PN281

THE VICE PRESIDENT: Let me be crystal clear about this. If you are going to make allegations like that against employers, [REDACTED], then you need to stop doing it or give me the names and details, in which case I'll refer them to the federal authorities, because I am not going to sit here and have you make comments like that.

PN282

That is not the way the Commission operates, and I'm not going to stand for it. If you're going to make a serious allegation that there's threats of violence with guns

being made against people, I want to know the details or I expect you'll withdraw the assertion, because it's completely inappropriate.

PN283

And you also need to understand, [REDACTED], it is highly unusual for all this red action to be occurring. That is not the way the Fair Work Commission operates. Normally employers – they've got rights too to understand the implications for them, and unless they know who they are I don't know how they can respond to these applications.

PN284

So you're not going to get indefinite red action, and you're not going to get this free opportunity to sit there and make serious, unsubstantiated allegations against employers in this industry sector. Do you understand?

PN285

[REDACTED]: I asked the person who said this to me if I could bring up the issue, and they said they requested their name to be not thrown into the mix, so to speak, to be withheld.

PN286

THE VICE PRESIDENT: I don't really care - - -

PN287

[REDACTED]: (Indistinct) - - -

PN288

THE VICE PRESIDENT: [REDACTED] - - -

PN289

MR [REDACTED]: - - - and I will retract that (indistinct) - - -

PN290

THE VICE PRESIDENT: Thank you. And next time you do it, I'll just simply refer it to the authorities and they can come and ask you, and you might have to answer the question, because I'm not going to have those kinds of things just thrown around in a hearing.

PN291

This is all on the record, and you're asking for your name to be redacted so you can sit there and have a free shot throwing allegations like that around. It's a serious matter. I take it seriously, and if you're going to do it again I will respond accordingly. Okay?

PN292

MR [REDACTED]: Yes, I understand completely.

PN293

THE VICE PRESIDENT: Good. Thank you. On that basis I'll adjourn.

**ADJOURNED INDEFINITELY**

**[11.52 AM]**