



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT GOSTENCNIK

AG2023/3021

s.185 - Application for approval of an enterprise agreement

**Application by Go Traffic Pty Ltd
(AG2023/3021)**

Melbourne

10.00 AM, WEDNESDAY, 22 NOVEMBER 2023

PN1

THE DEPUTY PRESIDENT: Yes, good morning. Mr Reid, you are appearing for the applicant?

PN2

MR M REID: I am, your Honour.

PN3

THE DEPUTY PRESIDENT: Yes, good morning. Mr Miller, you are appearing for the AWU?

PN4

MR S MILLER: Yes, I am, Deputy President.

PN5

THE DEPUTY PRESIDENT: Thank you. Good morning. Have the parties had an opportunity to discuss how the matter will proceed this morning?

PN6

MR MILLER: No, Deputy President.

PN7

THE DEPUTY PRESIDENT: All right. Perhaps we might deal with, as a preliminary matter, Mr Miller, your application to treat a witness confidentially and not reveal his or her identity to the applicant.

PN8

MR MILLER: Yes. For Mr Reid's benefit, the subject of the redacted statement has obviously decided, for reasons which are entirely understandable, that they don't wish to have any detrimental treatment in relation to their employment, to have their identity concealed. The witness - - -

PN9

THE DEPUTY PRESIDENT: Mr Miller, can I just ask you this: for what purpose - what is sought to be established by reference to the evidence that this witness will give?

PN10

MR MILLER: That person's experience in relation to traffic control work both prior to and from the commencement of their employment with Go Traffic.

PN11

THE DEPUTY PRESIDENT: This is for the purposes of making an argument that the classification of a new entrant should be referable to CW2 under the agreement because the person is a traffic controller?

PN12

MR MILLER: That's correct.

PN13

THE DEPUTY PRESIDENT: All right. Mr Reid, as I understand things, the classification of a new entrant is not one that presently is occupied by anybody in the business?

PN14

MR REID: Well, no, your Honour, because the very nature of the (audio malfunction).

PN15

THE DEPUTY PRESIDENT: Yes, I understand.

PN16

MR REID: That's the current position.

PN17

THE DEPUTY PRESIDENT: My issue is this: whatever else might be said about the confidentiality application, I'm not sure how useful it is to hear from a person in relation to the job they perform in the business and their understanding of the jobs performed in the business in circumstances where there are presently no persons employed who are undertaking functions - and I use that term without sort of deciding the issue - functions which are said to be caught, or will be caught, by the new classification. I am just not sure where it takes us.

PN18

Your principal position, as I understand it, Mr Miller is this, that whatever might be said about the new classification and the various descriptors, a person who performs the very same work that is a new entrant comes into a traffic control business, performs that work, including the training that is said to be undertaken, that person under the award is a CW2.

PN19

MR MILLER: That's correct.

PN20

THE DEPUTY PRESIDENT: To establish that point, I'm not sure you need this witness, do you?

PN21

MR MILLER: To the extent that a new entrant performs effectively what a traffic controller as classified does, that's what we're attempting to adduce evidence of.

PN22

THE DEPUTY PRESIDENT: I understand that, but there's no dispute that if a new entrant came into the business performing traffic controller work from day one, under the award, they would be classified as a CW2. That much isn't in dispute, is it, Mr Reid?

PN23

MR REID: No, it's not in dispute at all.

PN24

THE DEPUTY PRESIDENT: No. So really I'm not sure how much further the evidence of this witness takes the matter.

PN25

MR MILLER: Well, to the extent that we would say, in many ways, that the classification's illusory because - - -

PN26

THE DEPUTY PRESIDENT: That's a submission that you can make and I understand why you make the submission.

PN27

MR MILLER: Sure.

PN28

THE DEPUTY PRESIDENT: But for the purposes of establishing what a traffic controller does in the business currently, I don't think that's in dispute.

PN29

MR MILLER: Okay.

PN30

THE DEPUTY PRESIDENT: Including a new entrant.

PN31

MR MILLER: Okay.

PN32

THE DEPUTY PRESIDENT: So-called. All right. So can we put that to one side and I simply won't deal with that issue.

PN33

In that circumstance, Mr Miller, are you proposing to cross-examine any of the respondent witnesses?

PN34

MR MILLER: A witness statement was tendered on behalf of Mr Wickens. I intend to cross-examine him.

PN35

THE DEPUTY PRESIDENT: Yes, all right. Mr Reid, do you intend to cross-examine Ms Campbell?

PN36

MR REID: Very briefly, your Honour, yes, I do.

PN37

THE DEPUTY PRESIDENT: All right. Do the parties have a view about whether witnesses should be out until they finish their evidence?

PN38

MR MILLER: I am comfortable with that approach, Deputy President.

PN39

THE DEPUTY PRESIDENT: All right. Mr Reid?

PN40

MR REID: I don't have a view. Whichever suits the Commission.

PN41

THE DEPUTY PRESIDENT: All right. Perhaps we might proceed on this basis: if you don't have a violent opposition, then I won't make an order excluding the witnesses and, in those circumstances, we might start with the evidence of Mr Wickens and then deal with Ms Campbell's evidence and then we can have submissions, if that suits everyone. It does? All right.

PN42

Can I just ask this: Mr Miller, is the union's only objection in relation to the wage rate for a new entrant?

PN43

MR MILLER: That's correct, Deputy President.

PN44

THE DEPUTY PRESIDENT: All right. In correspondence from my chambers with the applicant, into which you were copied and to which you responded, a number of issues were raised in relation to the wage rates, including the industry allowance proposal, to which the respondent has responded. Do I take it from that that you accept their response?

PN45

MR MILLER: We note their response. In relation to the matters the subject of today, it's purely in relation to the new entrant issue and whether that meets the better off overall test.

PN46

THE DEPUTY PRESIDENT: I understand that, but there are a number of aspects to the better off overall test that were raised in correspondence, so if you have a view about them, I want to hear that today so that Mr Reid can respond.

PN47

MR MILLER: Sure.

PN48

THE DEPUTY PRESIDENT: I don't want there to be any dispute later on that you weren't given an opportunity to comment about those things, so perhaps you might give that consideration and address that in your final submissions.

PN49

MR MILLER: Yes, Deputy President, thank you.

PN50

THE DEPUTY PRESIDENT: All right. In those circumstances, we might have Mr Wickens sworn or affirmed.

PN51

THE ASSOCIATE: Mr Wickens, can you please state your full name and address for the record.

PN52

MR WICKENS: Stuart Grant Wickens. And my personal address or my business address?

PN53

THE DEPUTY PRESIDENT: Business address will be fine, Mr Wickens.

PN54

MR WICKENS: Business address is Level 1, 117 Myers Street, Geelong.

<STUART GRANT WICKENS, AFFIRMED [10.09 AM]

EXAMINATION-IN-CHIEF BY MR REID [10.09 AM]

PN55

THE DEPUTY PRESIDENT: Mr Wickens, thank you for that. Yes, Mr Reid.

PN56

MR REID: Stuart - if I may call you Stuart - do you have your statement in front of you?---I can have it in about two seconds. Yes.

PN57

Is it this morning true and correct in every respect?---Yes, it is.

PN58

I would like to tender that statement, your Honour.

PN59

THE DEPUTY PRESIDENT: Yes. Mr Miller, any objection to the tender?

PN60

MR MILLER: No, Deputy President.

PN61

THE DEPUTY PRESIDENT: Thank you. I will mark the witness statement of Mr Stuart Grant Wickens comprising 21 paragraphs and dated 20 November 2023 as exhibit 1.

EXHIBIT #1 WITNESS STATEMENT OF STUART GRANT WICKENS

PN62

MR REID: I have no general questions, your Honour.

*** STUART GRANT WICKENS

XN MR REID

PN63

THE DEPUTY PRESIDENT: Thank you, Mr Reid. Cross-examination, Mr Miller.

PN64

MR MILLER: Thank you, Deputy President.

CROSS-EXAMINATION BY MR MILLER

[10.11 AM]

PN65

Mr Wickens, can I take you to paragraph 4 of your statement?---Yes.

PN66

In paragraph 4, you reference the classification new entrant in schedule A of the Go Traffic Pty Ltd Enterprise Agreement 2023 to 2026. In the last sentence of that paragraph, you state:

PN67

The applicant has created this new classification in the proposed agreement in contrast to its previous enterprise agreements which did not include such a classification.

PN68

You can see that sentence?---Yes, I can.

PN69

To which previous enterprise agreements are you referring here?---To the previous Go Traffic - I think it's the 2016 to 2020 Enterprise Agreement.

PN70

But you're not sure?---No, that's the one.

PN71

Were you involved in the negotiation of those agreements?---No, I wasn't.

PN72

Mr Wickens, could I take you to paragraph 5 of your statement?---Yes.

PN73

In paragraph 5, you state:

PN74

Traffic management requires specific skills and the new entrant classification is designed to ensure that workers who have never undertaken traffic control activities, or have limited experience, are not put at risk or asked to do work outside of their skill level and experience.

PN75

You can see that?---Yes, I can.

*** STUART GRANT WICKENS

XXN MR MILLER

PN76

Mr Wickens, how does the new entrant classification ensure that workers who have never undertaken traffic control activities or have limited experience are not put at risk?---So it just ensures that they do 400 hours in that classification so that we can take them out there and pair them up with a more experienced person to help them learn on the job.

PN77

Specifically in relation to the issue of risk, how does it prevent that?---Well, we're helping them learn, so when a new entrant comes into the industry, if they have no experience, they can do their traffic control course, but that course doesn't teach them things like the situational awareness that they need to learn on the job, so things like traffic speeds, where to stand on the road, that sort of thing, which, yes, is a greater risk if they don't learn that.

PN78

From what you are saying, that's if a new entrant doesn't have experience previously?---That's correct.

PN79

Mr Wickens, can I take you to paragraph 1 of your statement?---Yes.

PN80

You mention in paragraph 1 that you have been working in the traffic management industry since 1994 in various roles as traffic controller, then team leader, then supervisor?---Yes.

PN81

Would you say that you were exposed to risk in undertaking traffic control activities as a traffic controller?---Yes.

PN82

How often?---Daily.

PN83

Daily? Okay. From the time that you started traffic control management work?---Yes, yes.

PN84

Mr Wickens, can I take you to paragraph 6 of your statement?---Yes.

PN85

At paragraph 6 of your statement, you state that:

PN86

The new entrant classification description is designed to ensure that new entrants to the industry are paired appropriately with a more experienced employee, GTC or above, to provide them with general supervision.

PN87

?---Yes.

*** STUART GRANT WICKENS

XXN MR MILLER

PN88

Where is the reference to pairing in that description? I trust that you have handy the schedule A to the agreement; do you have that there?---Yes, I can get that up. Yes.

PN89

You can see the classification description there for the new entrant?---Yes, yes.

PN90

Can you see a reference to pairing in that description?---No.

PN91

So doesn't that description say, in the second-last dot point, that they are responsible for the quality of their work subject to general supervision?---That's right.

PN92

So there's no reference to working with anyone in that description, is there then, Mr Wickens?---Well, that's what I would say 'general supervision' is.

PN93

Right?---Working with someone else.

PN94

Right. Okay. Mr Wickens, can I take you to paragraph 7 of your statement?---Hang on, I've just lost my statement. Hang on a sec. Yes, what paragraph did you say?

PN95

To paragraph 7?---Yes.

PN96

In that paragraph, you state that:

PN97

A new entrant is not the automatic or default classification for every new employee of the applicant. It is created for employees who specifically have less than 400 hours of experience in the traffic management industry.

PN98

?---That's right, yes.

PN99

Mr Wickens, hypothetically, let's consider someone in the traffic management industry who has 380 hours of experience?---Yes.

PN100

Obviously that's less than 400?---Yes.

*** STUART GRANT WICKENS

XXN MR MILLER

PN101

Would you accept that a full-time worker works around about 38 hours a week?---Yes.

PN102

So someone who works 380 hours in the traffic management industry, that's approximately 10 weeks of experience in the industry, isn't it?---Yes.

PN103

So then that classification, the new entrant classification, expects that some workers will have experience before they come to Go Traffic then, doesn't it?---Well, they could have, yes.

PN104

They could have? So they are not new entrants to the industry then, are they?---Well, if they've done - we're saying if they haven't done 400 hours, they are classified as that new entrant. If they haven't completed the 400 hours - that's the marker that we've chosen and that was agreed to in the EA meeting with everybody that that would be a good marker.

PN105

THE DEPUTY PRESIDENT: Mr Wickens, how are you going to determine whether somebody has had 400 hours?---So we would just look at their previous work history in the interview process, reference checks, that sort of thing, as part of the onboarding of their application.

PN106

Because there's no requirement for any other employer to keep a record of the hours worked other than for payment purposes, is there?---No.

PN107

Can I just ask you this: if you look at schedule A to the agreement, which is titled 'Employee Classifications', there are three columns: 'Go Traffic Classification'; the second column is titled 'Classification Description'; the third column is titled 'Promotional Criteria'?---Mm-hm.

PN108

That has, amongst other things, 'Complete 400 hours documented'?---Yes.

PN109

If a person completes the 400 hours, there's no guarantee, is there, that they will move to the next classification because it's promotional? It means, does it not, that the employer decides?---Well, the intent of the promotional criteria column is that if they meet those criteria, they would be lifted up to the next level.

PN110

So it really shouldn't say 'Promotional' it should say 'Advancement'?---Yes, you could say that, yes.

*** STUART GRANT WICKENS

XXN MR MILLER

PN111

'Incremental Advancement' because 'Promotional' connotes that the position is appointed?---Okay.

PN112

One doesn't automatically get promoted; it's an act of the employer?---Yes.

PN113

Whereas one moves from one classification to another based on the work that they perform, which would be automatic - an entitlement?---Okay.

PN114

So your understanding, or the way in which you say this position will work is that once a person has completed 400 hours - for example, let's say somebody comes and applies for a job, they have already got 200 hours, say?---Yes.

PN115

They would be still a new entrant because they hadn't completed 400?---Yes.

PN116

Then they will complete another 200 hours with you?---That's right.

PN117

Then they will automatically be classified into the next classification?---Yes, as long as they can complete those other criteria there.

PN118

Sure?---So the 400 hours, the vehicle driving, level 1, yes.

PN119

Yes?---Yes.

PN120

Sorry, Mr Miller, continue.

PN121

MR MILLER: Thank you, Deputy President.

PN122

In the scenario, Mr Wickens, that we were talking through before where someone has worked 380 hours in the industry prior to coming to Go Traffic, so they have experience then in the industry, don't they?---They do, yes.

PN123

Yes, they do. So someone who applies for a position at Go Traffic with 380 hours of experience in the industry, they are actually new entrants to Go Traffic then, aren't they?---Yes, yes.

PN124

Who come to the company with 380 hours of experience in the traffic management industry?---Yes.

*** STUART GRANT WICKENS

XXN MR MILLER

PN125

Is that right?---Yes.

PN126

Mr Wickens, can I take you to paragraph 8 of your statement?---Yes.

PN127

In paragraph 8 of your statement, you say in the second sentence:

PN128

We assess the prior experience of all of our new applications and then decide on the relevant classification for that new employee under our enterprise agreement.

PN129

Can you see that?---Yes.

PN130

Mr Wickens, what does the assessment process to which you refer involve?---So just like I said before, so it would be just a discussion with the candidate during their interview process and then just confirming with, you know, references that they have worked for the period of time that they have stated in their resume, basically. We can also quiz them about their knowledge and, yes, get a bit of a gauge on whether they have the level of experience that they need or not.

PN131

Would you get an understanding in that context of exactly how many hours they have performed previously in the industry?---I wouldn't say 'exactly' unless they had it documented, but, yes, if somebody said, 'Yes, look, I've worked full-time for 10 weeks' and it's 380 hours, then we would take that on face value and ask them a few more questions around their experience and that sort of thing and, if we thought that they were safe to step straight to that next level, then we would put them on at that next level.

PN132

Okay. So it may be - - -

PN133

THE DEPUTY PRESIDENT: Sorry, Mr Miller.

PN134

Mr Wickens, how was the 400 hours arrived at? Is there some study underpinning it and some research which points to a particular level of competence that one arrives at?---Look, we just - it was just a number that we came up with in the bargaining meetings. I think it might have even been suggested by the union that that was what some other traffic companies were doing, so we all discussed it and thought it was a good idea.

PN135

Yes, all right. Okay, Mr Miller, who suggested it?

*** STUART GRANT WICKENS

XXN MR MILLER

PN136

MR MILLER: Thank you, Deputy President.

PN137

Mr Wickens, obviously in the context then of that assessment, you will have an idea of how much experience in the industry they had. I mean, irrespective of that, what you say in paragraph 6 of your statement in referring to new entrants to the industry, what you say there is that:

PN138

The new entrant classification description is designed to ensure that new entrants to the industry are paired appropriately with a more experienced employee, GTC or above, to provide them with general supervision.

PN139

?---Yes.

PN140

Again, they are not actually new entrants to the industry, are they?---Well, if someone came with 380 hours, they're not a new entrant to the industry and, like I said, we would assess that, like we just spoke about, and if they satisfied, you know, the criteria that we have, then they wouldn't be classed in that new entrant category.

PN141

Okay?---They would be put on as GTC1.

PN142

Right, okay. Mr Wickens, can I take you to paragraph 9 of your statement, please?---Yes.

PN143

In paragraph 9 of your statement, you say that - and I am just taking you to the second sentence of that paragraph?---Yes.

PN144

Where you state:

PN145

In accordance with the proposed agreement classification structure, upon attaining 400 hours of experience and demonstrating the relevant competencies, a new entrant will advance to the GTC1 traffic controller classification.

PN146

?---Yes.

PN147

You can see that?---Yes, yes.

*** STUART GRANT WICKENS

XXN MR MILLER

PN148

Are there particular systems in place in terms of recording the hours of experience of traffic control employees?---Yes. Our job management system that we use to roster everybody, that collects all that data, how many hours they work.

PN149

Right. So that would provide some sort of detail once that 400-hour mark is achieved?---Yes, right, sure.

PN150

How does Go Traffic ensure that the relevant competencies have been demonstrated?---So we have an auditing process of work site inspections where people go out and check the employees' work on site. We also have a number of different VACs that are like, you know, a checklist that they fill in with the different categories to make sure that the employee understands what they need to do - that sort of thing.

PN151

How is that process initiated?---I'm not sure what you mean by 'initiated'.

PN152

What your statement refers to is that they need to demonstrate the relevant competencies, so how does the process of determining whether someone has obtained the relevant competencies, their being demonstrated, how is that started?---Okay. So normally it's just by the person that's working with them. So normally we would pair them up with a more experienced person and leave them with that person for a couple of weeks, ideally, or even longer, to learn all the ins and outs, and then we just get feedback from that employee as to what level, or how they're going with their training, and then we will do the VAC checklist and tick that off.

PN153

Right. Does the company then require that person who is providing that feedback to report at a particular time or at particular intervals?---Not at this stage, no.

PN154

And that happens for every traffic control employee?---Yes.

PN155

So you could guarantee then, in connection with the new agreement, considering what's happened in the existing agreement, that there wouldn't be anyone with more than 400 hours of experience, who demonstrates the relevant competencies, that they would then be classified as a GTC1?---I'm not sure what you mean by that.

*** STUART GRANT WICKENS

XXN MR MILLER

PN156

Just considering what you have advised in relation to what's in place concerning the amount of hours that an employee works, and also that feedback that is provided on that employee may not necessarily be at regular intervals, can you

rule out that someone who has started there hasn't worked more than 400 hours and is still being classified as a new entrant?---Yes, okay, so - - -

PN157

MR REID: Your Honour, I just want to just interject for a second. I think we are starting to drift into a conversation about the agreement actually being in place. The current agreement isn't in place at the moment, so this question is irrelevant.

PN158

THE WITNESS: Yes.

PN159

THE DEPUTY PRESIDENT: There are no employees who are currently classified as new entrants, even though they might, if the agreement were in operation, be new entrants. That's the position, isn't it, Mr Wickens?---That's right, that's right. I can answer the question in how we would address it in the future, when it comes into play, and that's that we would do a weekly check on the employee's hours through our system - we can report on that quite easily - and then we can ensure that nobody remains on the new entrant category that has fulfilled those competency levels. We can manage it.

PN160

Presumably, or at least theoretically, that can happen mid-shift?---Yes, well - - -

PN161

If all of the other competencies are already achieved and the only outstanding issue is the hours and mid-shift they clock over 400?---Yes. I would imagine that we would just - so we'd have a list of all the new entrants, we'd look at their hours and, as they progress up to that 400 level, then we can make sure that the other competencies are fulfilled and, when they tick over, they can get promoted to the new level.

PN162

Yes, all right. Yes, Mr Miller.

PN163

MR MILLER: Thank you, Deputy President.

PN164

Mr Wickens, can I take you to paragraph 10 then of your statement, please?---Yes.

PN165

Just looking at paragraph 10 of your statement, you say that:

PN166

The applicant's current processes ensure that those employees with limited experience are always rostered to work under the direction of a more senior person. They are never rostered to work alone. That will not change under the proposed agreement.

PN167

?---Yes.

PN168

You can see that?---Yes.

PN169

Mr Wickens, can you outline for the Commission just how the current rostering processes work, please?---Yes, sure. So we use a system called Traffio, which is a job-management system made for the traffic management industry. All of our - all of the employees have like a skill level applied to them and we can easily see, when we do the rostering, which employees have that skill level and we pair them up - either pair them up, or sometimes you might have a couple of new people with one more experienced person to be in charge of the crew, but we always put them on a crew that can be supervised by someone who is more senior with the experience.

PN170

So when you say that those employees are always rostered to work under the direction of a more senior person, what do you mean by 'direction'?---Just, yes, like under the general supervision of another person.

PN171

Would those employees then be the type that would be classified as new entrants under the proposed agreement?---The more senior people or the people that are less - the more senior people would be a GTC1 or 2 and the others that are being trained would be new entrants.

PN172

No, I was referring to the employees with limited experience being rostered to work under the direction of the more senior person?---Yes.

PN173

Does the company envisage that those employees would be the type that are classified as new entrants under the proposed agreement?---Yes, but we also do that with traffic controllers that have more experience and we pair them up with someone who has more experience than them also, so that's a matter that we've been using to train people which works quite well.

PN174

So the company's intention then, by the sounds of it, is to ensure that new entrants under the proposed agreement, employees with limited experience, are always working under the direction of a more senior person; is that right?---That's right, yes.

PN175

If that's the case and there are employees with limited experience, why isn't there any reference to working under the direction of a more senior person in the

description in the proposed agreement for the new entrant classification?---It does say 'Responsible for the quality of their own work subject to general supervision', so I think that's pretty clear that they are being supervised by someone else.

PN176

I disagree, Mr Wickens. If we are talking about the direction of a more senior person, working subject to general supervision is quite different, is it not?---No, I don't think so.

PN177

Why is there no reference then to never working alone there?---I'm not sure. It wasn't added.

PN178

Okay. So it just says that they are responsible for the quality of their own work, subject to general supervision, doesn't it?---It does, yes.

PN179

Again, Mr Wickens, can I take you then to paragraph 11 of your statement, please?---Yes.

PN180

You say there, in the first sentence, that:

PN181

Less experienced employees are supervised at all times as they lack the necessary skills and experience from a technical sense and require guidance in the delivery of their work.

PN182

?---Yes.

PN183

Can you see that?---I sure can, yes.

PN184

Mr Wickens, when you say less experienced employees are supervised, what do you mean by 'supervised' in that paragraph?---So they have someone else on site with more experience that can provide guidance.

PN185

Who ensures that they are supervised at all times?---Well, we do from the rostering point of view, so they make sure that someone is out on the site that has the experience and knowledge to give them guidance.

*** STUART GRANT WICKENS

XXN MR MILLER

PN186

I understand. So someone has been rostered with the expectation that they supervise, but, practically speaking, how do you ensure that supervision actually occurs on the site?---Well, we don't really go to that level to go out and check that people are being supervised with another employee or anything like that; we just

get feedback on the employee's performance by the person that's in charge out on site.

PN187

But that's pretty important, wouldn't you say, Mr Wickens? I mean it's a safety-sensitive industry and traffic management employees are performing safety-sensitive work where someone is meant to be supervising a new employee, or an employee who is inexperienced, so isn't it important then to make sure that that supervision actually occurs?---Yes, well we pair them up with people.

PN188

MR REID: Your Honour, can I just - - -

PN189

THE DEPUTY PRESIDENT: Yes?

PN190

MR REID: We're starting - we're drifting into the hypothetical scenarios about what may or may not occur in the future. It's not for Mr Wickens to be arguing about whether or not, under a particular circumstance, something will or will not occur. They have a contractual obligation pursuant to this proposed agreement to do so, and if they don't do so in the future in this hypothetical situation that Mr Miller is talking about, that can be a matter for a dispute in front of the Commission, but it's not for Mr Wickens to try to defend now, in advance, these practices of what may or may not occur into the future.

PN191

THE DEPUTY PRESIDENT: Mr Miller?

PN192

MR MILLER: I'm just trying to understand, Deputy President, his references to 'supervision' and practically how that plays out currently and how that might play out under the agreement.

PN193

THE DEPUTY PRESIDENT: I think the short answer is we don't know because the agreement's not in operation and there are no new entrants as defined in the agreement. Sorry, there might be, but they are not classified as new entrants and so the rules wouldn't apply to them.

PN194

In any event, Mr Miller, from my perspective, the relevant issue is really whether or not a person who is, or would be, classified as a new entrant under the agreement is a CW2 under the award. That's really the central issue and what the simpler practice is, or will be, is neither here nor there to that question.

PN195

MR MILLER: Understood.

*** STUART GRANT WICKENS

XXN MR MILLER

PN196

THE DEPUTY PRESIDENT: Yes.

PN197

MR MILLER: Thank you, Deputy President.

PN198

For a less experienced employee, Mr Wickens, in your view, what would providing guidance to that employee involve?---So showing them, you know, what to do when they're out in the field, so everything from paperwork, putting signs out, where to stand on the road, how to deal with customers, you know, how to set up the treatments, that sort of thing.

PN199

Sure. Thank you. Mr Wickens, can I please take you then to paragraph 12 of your statement?---Yes.

PN200

In paragraph 12 of your statement, you say in the first sentence that:

PN201

The applicant would never direct an employee with less than 400 hours of experience to work in one location away from everybody. We direct these employees to be in constant communication with their site leader and any other people on site either face to face or by UHF radio.

PN202

You can see that item at paragraph 12?---I can, yes.

PN203

So when you say that Go Traffic would never direct an employee with less than 400 hours of experience to work in one location away from everybody, are there systems and processes in place to ensure that?---Yes, the rostering system straight away. So the rostering system ensures that they get paired up with a more experienced person.

PN204

Mm-hm?---And the people that we pair them up with, we make sure that they are aware of what they need to do when they are out on site.

PN205

Mm-hm?---So I guess that gets back to your supervision question a little bit. We don't just pair them up with anyone; we make sure that those people that are out there teaching these people know what they're doing and know what's expected of them from the company's point of view.

PN206

Yes, so they are rostered, but that's a different thing, I suppose, to what actually happens practically on a shift?---Maybe, but, yes, I don't know, I can't really answer that. That's, you know - from what I know, the way that we do it, it works and we haven't had any issues with it.

*** STUART GRANT WICKENS

XXN MR MILLER

PN207

All right. Can I take you then to the next part in paragraph 12, where you state:

PN208

It is impractical, given the nature of the industry, to expect that an inexperienced employee will be working immediately adjacent to his or her supervisor during the day. That employee is working under supervision nonetheless.

PN209

?---Yes.

PN210

Can you explain then how an inexperienced traffic controller employee is supervised during their work - - -?---If they're not - - -

PN211

- - - if they are not immediately adjacent to that employee?---Yes, so what I mean by that is we don't have every inexperienced employee out there with a person standing right next to them all day because it's just - that's not practical and, yes, that's not the way we do it. We just make sure that they are in communication with them, that the supervisor can keep an eye on them, give them directions, that sort of thing.

PN212

So if they're not working immediately adjacent to their supervisor at all times, it's possible then that a supervisor may be some way from an inexperienced traffic controller; is that right?---Anything's possible, I suppose.

PN213

All right. Mr Wickens, can I take you to paragraph 14 of your statement?---Yes.

PN214

Have you got that in front of you?---I do, yes.

PN215

You mention there that there are pairing arrangements in relation to employees who are inexperienced being paired with more experienced traffic controllers for weeks at a time so that a new employee can learn from the more experienced traffic controller. That's in the last sentence?---Sure, yes.

PN216

So where a new entrant is paired, what would that look like when they are required, for instance, to perform driving duties?---Well, they're not usually required to perform driver's duties - like I'm talking about a new employee.

*** STUART GRANT WICKENS

XXN MR MILLER

PN217

Mm-hm?---So we do a driving VoC before the - and that's what's part of that new entrant category in the new EA as part of the promotional criteria. So to be then competent, they have got to go out with someone in the passenger seat, drive the

vehicle, and that sort of thing, so they don't just drive a vehicle without doing that test.

PN218

Mm-hm?---And normally they would just sit in the passenger seat and the more experienced person would drive and then the more experienced person would give them direction, so, like say they were setting up a job site, they would be driving along and the more experienced person would be saying, 'Okay, well you grab this sign out' or 'You grab the legs', or whatever it is, and then they get out of the vehicle and set it up, and that sort of stuff.

PN219

Could you rule out that a new entrant under the proposed agreement could be performing driving duties on their own?---Yes.

PN220

You could rule that out?---Yes.

PN221

Even though it's possible that a supervisor may be some way from an inexperienced traffic controller on any given work site?---Well, I mean, some way, it's probably - I mean how far is some way? I mean the guys, they'd be working on - they could be on a work site that's a hundred metres apart, but it doesn't mean they need to drive the - - -

PN222

Okay?---So, yes.

PN223

If I could take you to paragraph 15 of your statement?---Yes.

PN224

Have you got that there?---Yes, I do, yes.

PN225

Great. In the second sentence, you talk about that employee is under direct instruction from the traffic controller. When you say - and this is someone who is in the passenger seat of the vehicle driven by the experienced traffic controller?---Yes.

PN226

What does 'direct instruction' mean in that context?---Yes, so the inexperienced traffic controller is in the passenger seat and the experienced traffic controller is driving?

PN227

Mm-hm?---So, yes, sorry, what did you ask again?

*** STUART GRANT WICKENS

XXN MR MILLER

PN228

I'm just trying to understand what you mean by 'direct instruction'?---Yes, like I said before, just where they might be setting up the job site and they'll be saying, 'Okay, well, you grab this sign out of the rack when we pull over, you grab the legs out', that sort of thing.

PN229

And that direct instruction is constant, is it?---Yes. Yes, well, during that situation where they're driving in the vehicle and doing a set up, yes.

PN230

Okay. Can I take you then to paragraph 16, Mr Wickens, of your statement?---Yes.

PN231

You reference there the training of your inexperienced employees?---Mm-hm.

PN232

And one of those references is to, in the second-last line, 'Ensuring safe equipment handling'?---Yes.

PN233

Do you see that there?---Yes.

PN234

Do you do manual handling with your employees?---We do, yes.

PN235

What form does that manual handling take?---So loading and unloading equipment from the vehicle, you know, putting witches hats out on the site, putting signs out, all that kind of stuff, yes.

PN236

That is actually training that you conduct of them?---Yes, so the employees, they do that as part of their induction, but also when we're out on the side of the road, like we instruct the new employees to keep an eye out behind the other person's back while they're putting out signs, we show them how to, you know, bend their knees and keep their back straight when they put the legs into the signs, that sort of thing.

PN237

And that happens for every employee, every new employee?---Yes, should be, yes.

PN238

It should be or it does?---Yes, it should be, yes.

PN239

Okay. Can I then take you to paragraph 17, Mr Wickens, of your statement. You can see that?---Yes, I can.

*** STUART GRANT WICKENS

XXN MR MILLER

PN240

This is what you said:

PN241

We train them to alternate traffic with stop/slow bats. This is one of the first and most basic tasks that a new employee is taught to do. New employees must learn where to stand safely on the roadside, how to interact with live traffic, how to judge when it's safe to stop traffic, how to maintain and inspect route and how to use UHF radio for communication.

PN242

?---Yes.

PN243

Wouldn't that require someone standing next to an employee?---Yes, so for some of that staff, yes, but, you know, employees are at different levels throughout their training as well, so initially then, someone would be standing next to them - - -

PN244

But - - -?---But it doesn't mean that someone needs to stand next to them all the time in all situations.

PN245

In paragraph 12, you say that it's impractical, given the nature of the industry, to expect an inexperienced employee will be working adjacent to his or her supervisor?---Yes, so that's referring to every day of the week, every hour of the day.

PN246

Right?---There still is situations where they would be right with the employee teaching them face to face, but it doesn't mean that they will be doing that every hour of every day.

PN247

So there may be a circumstance where a new employee is interacting with live traffic and they don't have someone next to them?---Yes, potentially, but it just means that - like you wouldn't go out on someone's first day and just throw them into live traffic without showing them what to do and keeping them safe. That's more what I'm getting at with that.

PN248

Without having someone next to them?---Yes.

PN249

If I could then take you to paragraph 18, Mr Wickens, of your statement?---Yes.

PN250

You talk about, in the second sentence

*** STUART GRANT WICKENS

XXN MR MILLER

PN251

The interpersonal skills being equally vital in this industry as the role involves interactions with motorist, the public and an understanding of the client requirements.

PN252

How does Go Traffic ensure that its employees have those skills?---Well, we - - -

PN253

THE DEPUTY PRESIDENT: I am - - -

PN254

MR REID: I object. We're just drifting here. There's no point to this questioning

PN255

THE DEPUTY PRESIDENT: Yes, Mr Miller, I am wondering myself, Mr Miller, how this really is relevant to the classification issue which I need to decide.

PN256

MR MILLER: In the classification description, Deputy President, the second dot point talks about working to the extent of their skills and competence.

PN257

THE DEPUTY PRESIDENT: I understand all that, but the basic question that I need to answer is whether a person with zero hours' experience working in the position that a new entrant would work would, under the award, be a CW2. It's as simple as that, isn't it, not any more complicated than that?

PN258

MR MILLER: Yes. No, I'm not trying to complicate it, Deputy President, but, thank you.

PN259

THE DEPUTY PRESIDENT: Yes.

PN260

MR MILLER: Mr Wickens, if I could just take you finally to paragraph 21 of your statement, the last paragraph?---Yes.

PN261

It talks about the applicant does not, nor has it ever suggested there, that it requires its employees to work without supervision from the outset of their employment?---Yes.

*** STUART GRANT WICKENS

XXN MR MILLER

PN262

In light of what you said in paragraph 12, in which you say that it's impractical, given the nature of the industry, to expect that an inexperienced employee will be working immediately adjacent to his or her supervisor at all times during the day, you can't rule out that a new employee would be working alone, can you?---Yes. Yes, we can. So they're always under supervision. So when we talk

about that, we're talking about general supervision of someone on the job site. We would never send a new person with no experience out on a job by themselves - guaranteed, yes.

PN263

Thank you, Mr Wickens, that's all I have?---Thank you.

PN264

THE DEPUTY PRESIDENT: Any re-examination, Mr Reid?

PN265

MR REID: No, your Honour.

PN266

THE DEPUTY PRESIDENT: Yes, all right. Mr Wickens, thank you for your evidence, you are excused?---Thank you.

<THE WITNESS WITHDREW

[10.52 AM]

PN267

THE DEPUTY PRESIDENT: Mr Reid, is that the evidentiary case for the applicant, taking into account also the statutory declaration earlier filed and the materials filed with the application?

PN268

MR REID: Yes, it is, your Honour.

PN269

THE DEPUTY PRESIDENT: Yes, thank you. Mr Miller, do you want to call Ms Campbell?

PN270

MR MILLER: Yes, Deputy President.

PN271

THE DEPUTY PRESIDENT: We might administer the oath or affirmation now. Thanks, Lucy.

PN272

THE ASSOCIATE: Ms Campbell, can you please state your full name and business address for the record.

PN273

MS CAMPBELL: Jade Campbell, 685 Spencer Street, West Melbourne.

<JADE CAMPBELL, AFFIRMED

[10.54 AM]

EXAMINATION-IN-CHIEF BY MR MILLER

[10.54 AM]

*** JADE CAMPBELL

XN MR MILLER

PN274

THE DEPUTY PRESIDENT: Thank you, Ms Campbell. Mr Miller.

PN275

MR MILLER: Thank you, Deputy President.

PN276

Ms Campbell, do you have in front of you your signed witness statement dated 6 October 2023?---Yes, I do.

PN277

Is that witness statement true and correct in every particular?---Yes, it is.

PN278

Thank you, Ms Campbell. Ms Campbell, can I please take you to paragraph 8 of your statement?---Yes.

PN279

In paragraph 8, you state that, in connection with an as approved requisite for your traffic control work, you attained the following qualifications, and there are three qualifications listed there. You can see that?---Yes.

PN280

Ms Campbell, what do you recall the length of time it took to undertake each of these qualifications?---The first two qualifications were a three-day course. The second one I had to do after three months' worth of working.

PN281

Do you recall who paid for those qualifications?---I paid for them all.

PN282

If I can then take you to paragraph 9 of your statement?---Yes.

PN283

You state there that from the outset of your employment as a traffic controller, you were required to attend sites at which you were situated at the other end of the site from any other traffic controller. You can see that?---Yes.

PN284

Do you recall any times at which another traffic controller was positioned with you on site?---During shuttle flow, the other person would be at the other end of the site, which could be approximately 50 to 150 metres away.

PN285

Ms Campbell, can I now take you to paragraph 14 of your statement, please?---Yes.

*** JADE CAMPBELL

XN MR MILLER

PN286

In that paragraph, you state that, irrespective of your status as a new or junior employee, you would be required to complete incident reports on occupational

health and safety issues and safe work method statements, operate arrow boards and light towers and drive heavy trucks. You can see that?---Yes.

PN287

Ms Campbell, what do you recall about your performance of those duties?---In every job that I held as a traffic controller, at no point was I VoC'd in whether or not I could drive, I could actually use the beacons or the arrow boards, and neither was I ever asked whether or not I had done manual handling certification or actually trained in manual handling during the inductions.

PN288

Thank you, Ms Campbell. No further questions, Deputy President.

PN289

THE DEPUTY PRESIDENT: Would you like to tender Ms Campbell's statement?

PN290

MR MILLER: Yes, I would.

PN291

THE DEPUTY PRESIDENT: Is there any objection to the tender, Mr Reid?

PN292

MR REID: No, your Honour.

PN293

THE DEPUTY PRESIDENT: Mr Miller, it is usually polite to ask for permission to elaborate on evidence that is given in writing in advance, but we'll let that one go for the time being.

PN294

MR MILLER: Yes, thank you, Deputy President.

PN295

THE DEPUTY PRESIDENT: All right, I will mark the witness statement of Ms Jade Campbell, comprising 22 paragraphs, dated 6 October 2023 as exhibit 2.

**EXHIBIT #2 WITNESS STATEMENT OF JADE CAMPBELL
DATED 06/10/2023**

PN296

Any cross-examination, Mr Reid?

PN297

MR REID: Very, very brief, your Honour.

CROSS-EXAMINATION BY MR REID

[10.57 AM]

*** JADE CAMPBELL

XXN MR REID

PN298

Ms Campbell, as best as you can recall, because it's not entirely clear to me or to the applicant, which particular parts of the statement refers to your experiences within the first 400 hours of your employment?---My life in the first 400 hours, I was actually working as a subcontractor and I was subcontracting to Go Traffic. I was never asked whether or not I'd actually done any previous work or employment during that time, and then, after that, I did work for another traffic control company, so it actually stipulates - so saying that most of my work in the first three months, I didn't have anyone who was more senior, or was I asked whether or not I had previous experience.

PN299

Right. Can I just go back to the question I asked you?---Yes.

PN300

Which particular paragraphs of your evidence refer to specifically your first 400 hours of experience within the industry?---Nine, 10, 11, 12, 13, 14.

PN301

So they all refer to the first 400 hours while you were - why doesn't your statement say that?---I didn't say it, I'm sorry, I just didn't say it, but, in reflection of that, I have actually done those things for my entire career as well.

PN302

And then you suggest - - -

PN303

THE DEPUTY PRESIDENT: Mr Reid, in fairness, in paragraph 9, she says, 'From the outset of my employment as a traffic controller.'

PN304

MR REID: Understood, your Honour, but then - - -

PN305

THE DEPUTY PRESIDENT: So presumably that's a zero.

PN306

MR REID: I understand that, your Honour, but then her statement then goes on to talk about - - -

PN307

THE DEPUTY PRESIDENT: Yes, I understand the purpose of your question. It's not as though she does - she doesn't say in direct terms, 'This is what I experienced in my 400 hours', but certainly she indicates that this is her experience from the outset.

PN308

MR REID: You also just gave some evidence then, Ms Campbell, that you were a subcontractor to Go Traffic?---Mm-hm.

*** JADE CAMPBELL

XXN MR REID

PN309

When was that? Can you tell the Commission when that was?---I can get it for you in just a moment. I was a subcontractor in September of 2017 - is when I started in the traffic industry.

PN310

And you were employed by somebody else?---Yes.

PN311

So you have never actually been employed by Go Traffic?---Not directly, no.

PN312

Very briefly, at paragraph 18 of your evidence, if you can go briefly to that?---Yes.

PN313

No, I withdraw that - sorry, I withdraw that. I withdraw that question, Ms Campbell. In paragraph 12, where you say, 'I was never supervised', is that a reference to your time as a subcontractor to Go Traffic?---It's my time from the day I started in traffic in general.

PN314

In general? So you were never supervised - so again - - -?---No, I was never supervised because it was just me and one other person normally on a job, so, therefore, you had to be a traffic controller who did your own traffic.

PN315

All right. At paragraph 13, you say:

PN316

I would often attend site and find an inexperienced traffic controller working also on that site. I would take responsibility to instruct and guide that worker.

PN317

?---Yes.

PN318

Instructing and guiding that worker, would you describe that as supervising or supervision?---Well, I wouldn't classify myself as a supervisor for most of my jobs because we all worked by ourselves in a lot of the ways, so we're either setting up signs by ourselves, directing traffic by ourselves, with the other end of the person at the other side of the site.

PN319

To be clear here, we have just heard evidence from Mr Wickens about how the traffic control system at Go Traffic in particular operates?---Yes.

*** JADE CAMPBELL

XXN MR REID

PN320

And he described in quite some detail, after questions about how that occurred. Are you saying that Mr Wickens was giving false evidence about how traffic controllers work and how general supervision actually occurs?---I'm a

person from within the field and I can't say that he did or didn't mislead anything because I am not Mr Wickens and I do not work currently for Go Traffic.

PN321

MR MILLER: I don't know, Deputy President, whether it's appropriate for Ms Campbell to be invited to comment on Mr Wickens' evidence. I think this is about her evidence.

PN322

MR REID: The question is rather - because it's not entirely clear about when any of this occurred or whoever it occurred with respect to Go Traffic. That's the issue that - - -

PN323

THE WITNESS: Most of my - can I speak freely?

PN324

MR REID: Yes?---Most of my time and experience with Go Traffic has been more so as the organiser over the last two years and working with Go Traffic at the job sites, so that's - - -

PN325

MR REID: Thank you for (audio malfunction). I have no further questions, your Honour.

PN326

THE DEPUTY PRESIDENT: Yes, thank you. Any re-examination, Mr Reid?

PN327

MR REID: No, Deputy President.

PN328

THE DEPUTY PRESIDENT: Sorry, Mr Miller - apologies.

PN329

MR MILLER: Just briefly, Deputy President.

RE-EXAMINATION BY MR MILLER

[11.03 AM]

PN330

Just to clarify, Ms Campbell, in relation to your experience in the traffic management industry as a traffic controller, on starting a role within traffic management, you were never asked about your previous experience or the hours that represented that experience?---To be honest, you don't - you just hand your resume and get put into a large induction and whether or not you get the call for a casual job, you get it. It's a very transient industry, so you don't really - - -

PN331

Thank you, Ms Campbell. That's all, Deputy President, thank you.

*** JADE CAMPBELL

RXN MR MILLER

PN332

THE DEPUTY PRESIDENT: Yes, all right, thank you.

PN333

Ms Campbell, thank you for your evidence, you are excused?---Thank you, Deputy President.

<THE WITNESS WITHDREW

[11.04 AM]

PN334

THE DEPUTY PRESIDENT: All right, that concludes the evidence of the AWU, Mr Miller?

PN335

MR MILLER: Yes. Obviously, the redacted witness statement is not able to be - or the person the subject of the statement is not able to be in attendance.

PN336

THE DEPUTY PRESIDENT: As I indicated earlier, Mr Miller, I don't see - the issue for me in relation to this particular aspect of the case is simply this, and that is whether a person who commences work as a traffic controller performing traffic control functions with Go Traffic with zero hours of prior experience, what would that person be classified under the agreement - sorry, under the award. We know what they will be classified as under the agreement. That's the only issue, so I'm not sure that that evidence is of any particular assistance one way or the other.

PN337

The fact of the matter is that presumably there are some employees who, over the course of this current enterprise agreement, have started with Go Traffic with zero hours' experience and they were classified under the agreement at a particular rate, but the question is what is the appropriate classification under the award for that work.

PN338

An employer is entitled under an agreement to create a classification and if that classification is aligned to a classification under the award and the rate of pay for the agreement classification is more than the rate of pay prescribed by the award, then, generally, subject to other conditions, the employee will be better off overall. If it's less than, or equal to, then they won't be.

PN339

MR MILLER: Understood.

PN340

THE DEPUTY PRESIDENT: All right. So who wants to go first with submissions?

PN341

MR REID: I'm happy to, if you like, your Honour.

*** JADE CAMPBELL

RXN MR MILLER

PN342

THE DEPUTY PRESIDENT: Yes, off you go. Well, that way, you get a reply.

PN343

MR REID: Yes. I'll try to be brief.

PN344

THE DEPUTY PRESIDENT: Before you do that, let me ask you a question which is unrelated to this matter. I raised it earlier with Mr Miller. One of the issues that was raised with the applicant by my chambers was the position of the various classifications under the agreement. Even allowing for the new entrant not to be classified or compared to the CW2 rate, when the industry allowance is taken into account - and this is all set out in the wage comparison that was sent to you - all of the wage rates appear to be below the award rate.

PN345

MR REID: Your Honour, I address that on behalf of the applicant's response. It would appear to us that your associate has counted the industry allowance twice, through some mistake, so it's actually rolled into the rate. So it would appear that it's been a mistake of the Commission. We may be wrong on that, but it appears to us that the rates used by the Commission in that respect include the industry allowance already and it then put it on top of it again.

PN346

THE DEPUTY PRESIDENT: Yes, I see. That's easy to answer. Just bear with me. Yes, I see that. That's right. I see that. All right.

PN347

Then the secondary question that arises from that is that, obviously, if matching is made, which is the central issue I have to decide, if matching is made between the new entrant and the CW2 classification, obviously it doesn't appear to pass the better off overall test if that assessment is right, that is, that a new entrant should be a CW2 under the award.

PN348

Separately from that, even taking into account the CW1(b), (c) and (d) rates compared to the new entrant rate, the rates were less by 1.63, 2.4 and 4.45 respectively, and there's a similar differential in relation to casuals. Was that a matter that you addressed in the undertakings?

PN349

MR REID: I'm just having a look at the undertakings. There was a question about whether or not they would be less in terms of overtime and required to work on a public holiday. We addressed those in the undertakings.

PN350

THE DEPUTY PRESIDENT: Yes, I see that, yes. It's those specific rates. If you look at the wage table that was sent to you, accepting that the second one includes the industry allowance as a double count, but the first lot of rates comparison, even putting aside the AWU's matching comparison, just on the CW1(b), (c) and (d), you will see there's a negative differential.

PN351

MR REID: Yes.

PN352

THE DEPUTY PRESIDENT: So if you are right on your construction, that issue will need to be addressed.

PN353

MR REID: It will be, your Honour. At the risk of trying to present evidence from the Bar table, the issue is a question of timing with the 400 hours compared with three months in the industry. I was proposing to address that in my submission. We seek to circumvent the (b), (c) and (d) classifications and move immediately up to the CW2 classification (audio malfunction) if that makes sense, your Honour.

PN354

THE DEPUTY PRESIDENT: Yes, all right. What you are saying is that although the rates are lesser on the way through, they will still be better off overall?

PN355

MR REID: They will be better off overall because when they reach those particular classifications under the award, they will automatically move to a traffic controller.

PN356

THE DEPUTY PRESIDENT: What about the position of a person that doesn't make it there who works for you for 200 hours?

PN357

MR REID: Well then they stay - if they're not working for us any longer, then what does it matter?

PN358

THE DEPUTY PRESIDENT: Yes, but I've got to assume the position of what would be the position as at test time for a prospective employee or for an actual employee under the agreement as compared to the award and, as at test time, a new entrant who might be entitled under the award conservatively to be classified as a CW(b) is not better off overall.

PN359

MR REID: Your Honour, I think it's implicit in your question you're suggesting that when they reach what is a three-month experience level to move up to (b), which is what the award provides for?

PN360

THE DEPUTY PRESIDENT: Yes.

PN361

MR REID: So the very nature of the industry is a casual nature, your Honour, so that we're very careful to avoid a situation where an employee could effectively

have worked two shifts over a period of three months, which is quite possible, and then would then be, in accordance with the award, if you like, from a strict interpretation of the award, moved up to a (b). We would say that three months' experience in the context of the award actually means three months' experience working.

PN362

THE DEPUTY PRESIDENT: Yes.

PN363

MR REID: It doesn't mean a three-month period of time in the award.

PN364

THE DEPUTY PRESIDENT: But again, theoretically, a person could come and work for you and, as at test time, they've got that three months' experience, so they would be a CW1(b) and, on that day, as at test time, they're not better off overall and they won't be. Why should I assume that that person will continue for another period of time in order to get the 400 hours up in total to move to a CW2 and, even then, it will take a bit of time before they are better off overall over that longer period?

PN365

It's a point in time comparison and just as the Commission isn't permitted in assessing - I mean if this agreement was made two days before or the test time was two days before the national wage increase took effect, I'm not entitled to take into account the fact that the award wages will increase in two days' time after test time. I apply the rates in the award as at test time.

PN366

MR REID: Mm.

PN367

THE DEPUTY PRESIDENT: Similarly here, you're asking me to take a particular point of view about what may or may not happen in the future. All I know is that, as at test time, that person, the prospective employee or the new employee who has got three months' experience, is entitled to a particular rate under the award and is given a lesser rate under the agreement.

PN368

MR REID: I understand your position, your Honour, and again it comes back to the question about what does three months' experience mean.

PN369

THE DEPUTY PRESIDENT: Yes.

PN370

MR REID: And we say that three months' experience means three months of actual work over a period of time and, if you calculate that out, I think it's the equivalent of 6.4 hours a day over 62 days. That's three months' work if you're taking the average.

PN371

THE DEPUTY PRESIDENT: Yes.

PN372

MR REID: If you worked eight hours a day, that's 50 days that takes.

PN373

THE DEPUTY PRESIDENT: Sure.

PN374

MR REID: So we would make that consideration. Now that's a question, as far as I can - - -

PN375

THE DEPUTY PRESIDENT: Yes. Again, the nature of casual employment is that a traffic controller might work for you and might also work for another or other contractors, and so might only work for a short period of time, you know, one shift a week for you and a couple of shifts for somebody else, and over that same period accumulate the three months' entitlement. Because of the nature of the work, that's all possible.

PN376

In any event, I have put you on notice on that. If you want to give consideration for an undertaking in relation to that issue - and that's putting aside Mr Miller's point - that initially is concerning me, even if I don't accept Mr Miller's point.

PN377

Sorry, Mr Reid, I interrupted you. You put your submissions.

PN378

MR REID: I think, your Honour, as I said, we would have to stand on that. I think it's our submission, in any event, but I will deal with that. I will be as brief as possible.

PN379

The applicant's outline, as provided to the Commission, is taking a very straightforward approach, I think your Honour has recognised, about this dispute and it submits that whilst evidence of past practices in the traffic control industry is a helpful background, it ultimately doesn't assist the Commission to decide whether or not a new entrant classification in the proposed agreement should be compared with an ECW1 or an ECW2.

PN380

It is the applicant's submission that the Commission should examine - the examination could go no further than an examination of the classifications against the new entrant classification and decide which one is more appropriate or more aligned to the applicant's new classification of a new entry. The applicant has drawn the Commission's attention to the following factors in its submissions that demonstrate that the ECW, subject to your Honour's comments just then, is the most appropriate classification.

PN381

The first one is the discussion about general supervision as mandated by clause A.2.1(a) of the award. Not only that, but the evidence of Mr Wickens, in our submission, and I dare say the two witnesses, or certainly the respondent witness for the AWU, supports the notion that inexperienced workers, now defined in our agreement as 400 hours' experience, are provided with general supervision under the award.

PN382

It could be said that the AWU is arguing, at least by implication, your Honour, that an employee under CW/ECW1 classification does require constant supervision. That is contrary to the definition of general supervision in A.1.12, and confirmation that a CW/ECW1 worker must work under general supervision in A.2.1(a). That's what it says; it doesn't say anything else.

PN383

Number two, a new entrant will not be required or asked to supervise another employee - we have made that clear by our evidence - whereas a traffic controller, under the proposed agreement and the current agreement and under the classification under the award, is responsible for the supervision of one or more of the ECW1 classified employees.

PN384

The ECW2 classification under the award actually contemplates a traffic controller supervising another employee of new entrant status. If not an employee with less than 400 hours, it's our submission, your Honour, then what kind of employee is the award referring to in these circumstances? What is that type of employee if it's not somebody that can be supervised by a traffic controller?

PN385

There is also an implicit part of the AWU's evidence and outline that seems to be asserting that the industry requirement that all new starters complete the two units of competency before starting elevates them to a CW/ECW2 classification, or, in other words, they just commence work as a traffic controller. That argument, in our submission, belies the fact that such competency training is expressly referred to under the classification CW/ECW1 in the award. It actually refers to that specifically. It is also contrary to the evidence given by Mr Wickens that the role requires job experience and you simply cannot be taught in a classroom and start day one as a traffic controller.

PN386

The AWU's submission at paragraph 6, based on its evidence that traffic controllers, and more broadly its new evidence, have historically been engaged in a manner more consistent with ECW2 should be rejected by the Commission because, in our submission, the evidence presented has not demonstrated that historically employees with less than 400 hours' experience have worked, or been expected to work, in that manner and, for the reasons we have articulated, your Honour, about the nature of the Commission's inquiry today, it does not assist the Commission in any event.

PN387

Finally, the pay rates. Subject to the discussion we had earlier, your Honour, paragraphs 22 to 24 of the applicant's outline demonstrate that a new entrant will, for the first 400 hours, be five cents per hour better off. That includes the industry hours. Then they proceed immediately to the traffic controller under the proposed agreement, whereas the award has that stated 12-month process to reach the traffic controller classification that you have suggested.

PN388

With respect to the (a), (b), (c) and (d) question, that isn't - - -

PN389

THE DEPUTY PRESIDENT: Can I just raise this issue with you, Mr Reid. For the purposes of the comparison, the new entrant reference in the CW level 1(a), the rate upon commencement, that's the new entrant rate.

PN390

MR REID: Mm.

PN391

THE DEPUTY PRESIDENT: A new entrant is defined in the award to mean an employee who has never previously worked within the on-site building and construction industry.

PN392

MR REID: Mm.

PN393

THE DEPUTY PRESIDENT: Well, if one then goes to the definitions in clause 2 and 4, relevantly, clause 2 provides that on-site building, engineering and civil construction industry has the meaning given in 4.2, and then 4.2, which is a coverage clause, but it then separates, you will see in 4.3, general building and construction and civil construction. On one view, the new entrant classification is limited to on-site general building and construction and not civil construction.

PN394

MR REID: Mm.

PN395

THE DEPUTY PRESIDENT: So that classification in the award doesn't apply to civil construction.

PN396

MR REID: There is certainly that view, your Honour, certainly, but the award doesn't say that it doesn't.

PN397

THE DEPUTY PRESIDENT: Apart from the definitions.

PN398

MR REID: Well, it doesn't provide a direct exclusion and, under the circumstances, I just refer to what I said earlier about what would be the purpose

of that particular classification under the award if it didn't have a purpose in this industry.

PN399

THE DEPUTY PRESIDENT: But your new entrant is a person who has no experience as a traffic controller.

PN400

MR REID: Yes.

PN401

THE DEPUTY PRESIDENT: As opposed to somebody who has no experience in the industry.

PN402

MR REID: Yes.

PN403

THE DEPUTY PRESIDENT: The new entrant classification, even if it applied to civil construction, is concerned with industry experience, not classificational experience.

PN404

MR REID: Yes.

PN405

THE DEPUTY PRESIDENT: And so it's quite possible that a person might have worked on a construction site as a peggy and then turned his or her hand to traffic control but has no experience in that. Under your proposal, that person would be a new entrant, but, under the award, they would not be.

PN406

MR REID: I think that is possible, your Honour. I would have to concede it is possible that a peggy could come along and one day decide that they would like to go into traffic control. All I could argue in reverse, your Honour, is that the ECW2 classification has a direct reference to traffic controller in it.

PN407

THE DEPUTY PRESIDENT: Yes.

PN408

MR REID: And we would say that the new entrant themselves can't be a traffic controller because, when you start at the beginning, you need to be - you can't
- - -

PN409

THE DEPUTY PRESIDENT: Well, what else does your client do?

PN410

MR REID: Other than traffic control?

PN411

THE DEPUTY PRESIDENT: Yes.

PN412

MR REID: Well, it does various other industries, including tree lopping and some other things like that.

PN413

THE DEPUTY PRESIDENT: But none of these entrants and going to be engaged in tree lopping, are they?

PN414

MR REID: No, not as far as I'm aware, your Honour, no.

PN415

THE DEPUTY PRESIDENT: No. They'll be engaged in traffic control under supervision.

PN416

MR REID: That's right, but that's not a traffic controller. In our submission, it's a new entrant, but I understand your Honour's point.

PN417

THE DEPUTY PRESIDENT: Yes, all right. Continue, Mr Reid.

PN418

MR REID: I've just about finished, your Honour. Just to deal with the issue of the structured process between the (a), (b) and (c), as I said before, our submission simply is that, in circumstances where the award uses a blunt instrument like three months, during discussions and you saw in the evidence today, which wasn't contested, the parties agree that that would be a proper figure, if you like, or a benchmark to use for whether or not somebody has attained the amount of experience that's required. We have used that number for those purposes and, as I said before, that works out approximately at 6.4 hours a day over 62 days to give you that three-month experience, but if your Honour is of the mind that that can be circumvented by previous experience in some other way, we would consider an undertaking, if that would suit the Commission.

PN419

THE DEPUTY PRESIDENT: Yes, all right.

PN420

MR REID: They are my submissions, your Honour.

PN421

THE DEPUTY PRESIDENT: All right. So do I take it from that that, once I decide these issues, you want an opportunity to consider whether you want to give any undertakings to resolve any concern before the matter is finally concluded?

PN422

MR REID: Yes. If there are any other further concerns that your Honour raises before making a final decision, we would like the opportunity to address that.

PN423

THE DEPUTY PRESIDENT: I guess what I'm asking you is this: if I decide the issue, either partially or wholly, consistent with Mr Miller's point of view, the consequence of that is the agreement doesn't pass the better off overall test, do you want an opportunity to provide an undertaking if that's the conclusion I reach, or are you content for me to simply not approve the agreement?

PN424

MR REID: That's a matter for instructions, I think, your Honour. However - - -

PN425

THE DEPUTY PRESIDENT: Rather than you getting them on the run, perhaps you might get those instructions and advise my chambers by, say, close of business at the end of the week.

PN426

MR REID: Yes, understood, your Honour.

PN427

THE DEPUTY PRESIDENT: Yes, all right. Thank you. Mr Miller.

PN428

MR MILLER: Thank you, Deputy President. The union's case is that the proper corresponding award classification for the new entrant classification under the agreement is CW2.

PN429

Firstly, the CW2 classification is specifically expressed as incorporating the broad-banded award classification of traffic controller.

PN430

Secondly, the nature of the classification description of a new entrant under the proposed agreement, especially the reference to the responsibility for the quality of their own work subject to general supervision and also the documented period of 400 hours, makes the CW2 classification the appropriate comparison.

PN431

Thirdly, the evidence of Ms Campbell reflects the duties performed by new entrant traffic controllers and reflects the responsibilities set out in the CW2 classification.

PN432

Finally, in terms of the evidence of Mr Wickens, that reflects that traffic controllers with experience who come to Go Traffic can be expected to be classified as new entrants under the proposed agreement, there seems to be a lack of process and system around the documentation of hours to ensure that new entrants won't work beyond 400 documented performance of hours before being reclassified, therefore allowing a scenario whereby new entrants under the agreement would continue to work in that classification in spite of an entitlement to be classified higher and paid accordingly.

PN433

Finally, in relation to the evidence of Mr Wickens, in reality on site, it appears as though he can't rule out that new entrants are, in fact, to a large degree, supervised from a distance.

PN434

Those are my submissions, Deputy President.

PN435

THE DEPUTY PRESIDENT: Yes, all right. Just bear with me. Mr Miller, I am confirming that, either way - I'm sorry, not either way - if the agreement is approved, with or without undertakings, or with or without further undertakings, the union wants to be covered by it? That remains its position?

PN436

MR MILLER: That is correct, Deputy President.

PN437

THE DEPUTY PRESIDENT: Yes, all right. Thank you for that. Mr Reid, anything in reply?

PN438

MR REID: Only one small point, your Honour. The question about the 400 hours and whether or not that would be appropriately applied, I mean those things are matters for the future and it's not a question for the Commission to decide. That would be a dispute application under the new agreement.

PN439

That's the entirety of the submissions, your Honour.

PN440

THE DEPUTY PRESIDENT: Yes, all right. Thank you. I will reserve my decision and indicate, Mr Reid, that you can let my chambers know by the end of the week whether, in the event that I am against you on the classification issue, your client wants an opportunity to provide any further undertakings for my consideration. Otherwise, I will either approve the agreement with the existing undertakings or perhaps seek some further undertakings in relation to any issue that I identify in addition to the classification issue, but otherwise I will determine the matter adversely against the applicant in the event that I am with Mr Miller and you have not indicated that you wish to give further undertakings.

PN441

MR REID: Thank you, your Honour.

PN442

THE DEPUTY PRESIDENT: Thank you. I will reserve my decision on that basis. Can I thank you all for your helpful written and oral submissions. I wish you a good day. We are adjourned.

PN443

MR REID: Thank you.

PN444

MR MILLER: Thank you, Deputy President.

ADJOURNED INDEFINITELY

[11.31 AM]

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