

**IN THE FAIR WORK COMMISSION**

**Matter No: AM2020/104**

**Title: Application to vary the Horticulture Award 2020**

**AUTHORITIES REFERRED TO IN Ai GROUP'S REPLY SUBMISSIONS**

Databases

[Department of Employment and Workplace Relations, 'Variation of Award Modernisation Request under Section 576C\(4\)' \(26 August 2009\)](#)

[Minister for Trade and Export Growth \(2019 CAR 10000\)](#)

Re Galvanised Iron Manufacturers (Lysaght's Newcastle Works Ltd., National Australia Bank v Lysaght's Newcastle Works Ltd.) **Attachment A**

[Bureau of Economic and Financial Research \(2019 CAR 10000\)](#)

[Department of Employment and Workplace Relations, 'Attachment B'](#)

Department of Employment and Workplace Relations

[Department of Employment and Workplace Relations, 'Attachment B'](#)

ARC Materials

[Department of Employment and Workplace Relations, 'Attachment B'](#)

Department of Employment and Workplace Relations, 'Attachment B'

[Minister for Employment and Workplace Relations, 'Variation of Award Modernisation Request under Section 576C\(4\)' \(26 August 2009\)](#).

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000 [Fair Work Ombudsman, 'FWO launches 2019000 0r00ties' \(Media Release\),  
0 0000 00000](#)

000 [Fair Work Ombudsman, 'FWO launches 202021 priorities' \(Media Release\),  
00 0000 00000](#)

000 [Fair Work Ombudsman, 'Annual Report 201920'](#)

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Dec. 15.

[CANTOR, J.]

*In re* GALVANIZED IRON MANUFACTURERS (LYSAGHT'S NEWCASTLE WORKS LIMITED, NEWCASTLE) AWARD.

*Galvanized Iron Manufacturers (Lysaght's Newcastle Works Limited, Newcastle) Award—Variation—Piecework—Rates of pay—Shift allowance—Holidays—Annual leave—Application by Federated Ironworkers Association of Australia, New South Wales Division, for variation.*

When fixing piecework rates for employees in the galvanising department of Lysaght's Newcastle Works Limited, the Commission (Cantor, J.) determined that the rates should be ascertained by adding 25 per cent. to the time rates of pay in the Galvanised Iron Manufacturers (Lysaght's Newcastle Works Limited, Newcastle) Award (LI I.G. 1648), and by dividing the total sum by the agreed average actual production of employees under incentive rates of pay.

Distinction between fair day's work and production given under incentive rates, discussed.

APPLICATION by Federated Ironworkers' Association of Australia, New South Wales Division, for variation of award.

*Kingsley Newell* for Lysaght's Newcastle Works Proprietary Limited.

*Mr. H. L. Denford* on behalf of The Federated Ironworkers' Association of Australia, New South Wales Division.

CANTOR, J.: I have now to deal with piece-work rates in this industry. By the Galvanised Iron Manufacturers (Lysaght's Newcastle Works Ltd.) Award published 25th June, 1937 (LI I.G. 1648) time rates of pay were fixed and general conditions of employment prescribed for all employees of the company at the Newcastle works, except mill operatives and engine-drivers. This award, in point of fact, was the first award made for the employees concerned, though there was a previous award made by the Deputy Commissioner governing those engaged in the galvanising department only. The practice has been for that department to operate under a bonus system, while in all other departments the men were employed upon piece-work. The union now presses for piece-work throughout, and I have decided to accede to that claim.

When the general award was made, by arrangement the parties conferred with a view to agreeing upon a method of payment by results in the light of the time rates of pay fixed and the general conditions prescribed. After having met on several

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occasions, they were unable to reach complete agreement, and the matters in respect of which they remain in dispute must be determined.

The first matter which has to be considered is the question of the method by which the piece-work rates are to be fixed. Substantially it may be said that the award made this year, for the first time assessed the value of the work done upon a time work-basis. Time rates of pay had been previously fixed by award for some few classifications engaged in the galvanising department, but those rates were reviewed at the request of the employees. An ordinary method of striking minimum piece-work rates where they are to be prescribed by award in addition to minimum time rates, is by (a) determining what is a fair day's work or output for each class of work upon which men are engaged at the time rate of pay; (b) adding to the time rate of pay in each case some percentage by reason of the fact that the employees are to work at piece-work rates; and (c) dividing the total of these two sums by the number of items, articles, or unit of weight representing a fair day's work. The resulting amount is the minimum piecework rate to be paid. (*Gas Meter Makers' case*, [1932] A.R. at p. 352.) The percentage addition to the time rate of pay is not always the same. It varies from industry to industry, and indeed in some industries no addition at all is made merely by reason of the fact that the employees are to work upon piece-work rates.

In the present case all parties are agreed that it is well nigh impossible to determine what is a fair day's work for the employees doing the various classes of work under consideration, so that the method above referred to cannot be applied here.

As a result of their conferences, however, the parties were able to agree upon the actual average production of each class of employee under incentive rates of pay over a period of six months. The agreed figures, in most cases, if not all, will be figures proper to be applied in the way I will indicate later.

Time does not now permit a review in any detail of the distinction in character between piece-work and bonus rates of pay, nor of the practice of the company with respect to the incidence of those respective rates and the effect upon earnings. The fact is, however, that the rates generally in operation before the making of the award produced earnings which can only be regarded as comparatively distinctly high. They are distinctly

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high in many cases when compared with the earnings of the employees on tonnage rates at the manual and mechanical mills, and not only are they distinctly high when related to the time rates of pay fixed for the first time by the award, but it is clear that they do not preserve the relationship which the award created between the various classes of employees. It is disturbed to a marked degree. In this regard also it is necessary to bear in mind that the award makes separate provision for shift allowances, time rates of pay for public holidays not worked, annual leave for one week on pay, and for the supply at the company's expense of gloves and oilskins where those articles of protective clothing are reasonably necessary. Previously shift allowances were not payable and employees received public holidays and leave without pay. Apart from the protective clothing, the value in money to the employees concerned of the allowances referred to varies from 5s. to a little more than 8s. per week.

I have frequently pointed out that, when considering the actual earnings of piece-workers, it must never be overlooked that men working under incentive rates almost invariably give a greater production or output than may fairly be expected of employees on time rates. I have not disregarded that aspect of the matter here. Moreover, I act throughout upon the view that payment by results, a long standing custom or practice in this industry, is not to be discouraged, but rather encouraged.

Various contentions were raised by Mr. Kingsley Newell on behalf of the company and by Mr. Denford for the employees. Mr. Newell asked for a complete review of the piece-work rates as had been in operation and for the fixation of all piece-work rates, if they were to be introduced generally into the industry, in the light of the time work rates, which rates he rightly pointed out were actually determined by award as a result of the complete review of the industry requested by both parties. Mr. Denford, on the other hand, suggested that the Commission should, in the main, follow, or at least be guided, if not controlled, by the existing bonus and piece-work rates.

It might here be recorded that the company some little time ago stated that it intended to reduce the then existing incentive rates to rates that it regarded as fair and proper to be paid, but that, following a suggestion of the union, it was agreed that the new rates should be introduced gradually, and accordingly the old rates were to be stepped down in three stages extending over a period of six months.

There does not exist at the present time any material which would show the actual data upon which the existing rates were struck by the company.

Having heard the evidence called by the parties and their arguments thereon, it is clear that in respect to many of the relevant and important facts relating to the work now to be rated and the conditions under which it is done, together with the conditions under which it was done when the rates were introduced, including intermediate changes in those conditions, the parties are not in agreement. The company's general attitude is that the piece-work and bonus rates were all fixed when the conditions of the industry were very different from what they are to-day, and have been different for some time. That some changes have taken place is not really denied. The view I take is that it is not necessary for me on this occasion to measure the extent of the changes. I am convinced that over the years since the period 1923-1931 when most of the rates were struck, there have been many changes in the methods of carrying on the industry. Such important aids to employees as increased crane facilities and conveyors of various types have been generally introduced. In some cases new and improved machines have been installed and improvements in existing machines made. The necessity for man-handling of material and the manual loading and unloading of trolleys has been greatly minimised. Another important change claimed by the company directly affecting output is that there is now an even flow of material through the works, whereas when the rates were introduced the tonnage available was definitely more uncertain and intermittent. I think there is considerable force in that contention and in the other matters touching the carrying out of the work to which I have just referred. I have stated that I do not think it is necessary, even if it were possible, to measure the cumulative effect of all the alterations, and I have not attempted to do it. They are all relevant considerations, and taking them, together with all the other matters to which reference has been made, the more specific instances given by Mr. Parry Okeden in his evidence, and by the witnesses called for the union, I am clearly of opinion that little or no assistance can be derived from the rates of remuneration relied upon by the union, and that new piece-work rates of pay should be prescribed in the light of the time rate fixations and other conditions of employment contained in the recently-made award.

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Having given very careful thought to the problem presented, and all that has been urged, and in particular to what I have observed on the very many inspections I have made of the work of all the employees concerned in the present matter and of the mill operatives also, I have come to the conclusion that the piece-work rates in this particular branch of the industry should be ascertained by adding to the time rates of pay prescribed by the award twenty-five per cent. and by dividing the total sum by the agreed average actual production under incentive rates of pay. The addition of twenty-five per cent. is certainly a substantial one, and, moreover, it is to be taken with the various conditions affecting rates of pay to which reference has been made, because the award will now be varied to provide that piece-workers as well as time-workers shall receive shift allowances, payment for holidays, and annual leave of one week at time rates. I award it, however, influenced to some extent by the standard of earnings enjoyed in the past by employees in this industry working under incentive rates.

I have been in doubt regarding the period for which this variation should be made, but in view of the difficult nature of the matter I have decided that the variation should have a currency of six months from the date of its operation, after which period it will be open to either party to apply with respect to the award as they may be advised. The application can then be considered in the light of the experience of the operation of the award.

The variation will take effect from the commencement of the next pay period.

A. A. Rankin and Co., solicitors for Lysaghts Newcastle Works Proprietary Limited.

(The order is published in LIII I.G., page 1582.)





