



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT CROSS

C2023/2135

s.739 - Application to deal with a dispute

**Australian Workers' Union, The
and
Vinidex Pty Limited
(C2023/2135)**

Vinidex Pty Limited Smithfield Site Enterprise Agreement 2021

Sydney

10.00 AM, THURSDAY, 3 AUGUST 2023

PN1

THE DEPUTY PRESIDENT: Yes. Good morning. Could I take the appearances, please.

PN2

MS DOUMIT: Thank you, Deputy President. Doumit, and I appear with Hawach, both legal officers for the Australian Workers' Union.

PN3

THE DEPUTY PRESIDENT: Thank you very much.

PN4

MR RAUF: Please the Commission. Rauf, R-a-u-f, initial B., I appear for the respondent, and I have also at the bar table my instructing solicitor Ms Barratt, initial K.

PN5

THE DEPUTY PRESIDENT: Thank you very much.

PN6

MR RAUF: Thank you.

PN7

THE DEPUTY PRESIDENT: Okay. Have the parties had any discussions as to how they wish to conduct the proceedings?

PN8

MR RAUF: No. I think for our part, we had presumed it would just operate in the usual way, and the union would lead its witnesses and followed by the respondent. I can say I have had brief discussions with my friend, and we don't - we're hopeful that it won't require the full time allocated and that we can move through it efficiently, but, you know, I expressed that hope upfront.

PN9

THE DEPUTY PRESIDENT: I understood there were issues in relation to presence of witnesses in the hearing room.

PN10

MR RAUF: Yes. We've - so for the respondent's part, there are three witnesses. One of them is in Brisbane, of course.

PN11

THE DEPUTY PRESIDENT: Yes.

PN12

MR RAUF: There are two others in the room, Mr O'Keefe and Mr Burton. In respect of Mr Burton, we'd be requesting that he be permitted to remain in the room. He's the manager who's instructing in relation to the matter, and when one looks at his evidence, he really gives evidence based on company records, agreements and so forth. There's no real point of conflict in terms of discussions with any of the employee witnesses who's - - -

PN13

THE DEPUTY PRESIDENT: He's a new arrival onsite.

PN14

MR RAUF: Indeed.

PN15

THE DEPUTY PRESIDENT: Yes. Is there any difficulty with Mr Burton instructing? If there is, please say so.

PN16

MS DOUMIT: Yes. No. I think that's fine. Thank you, Deputy President.

PN17

THE DEPUTY PRESIDENT: Okay. Thank you. Well, other than that housekeeping issue, nothing further before we commence?

PN18

MS DOUMIT: Well, I did foreshadow with Mr Rauf that there was a late witness statement which was served on us last night at approximately 8.57 pm. I'm not sure if you have received a copy of that.

PN19

THE DEPUTY PRESIDENT: You're ahead of me.

PN20

MR RAUF: I'm happy to address that at the outset, Deputy President. Perhaps if I can hand it up, and I can explain the - it's a supplementary witness statement of Wayne Burton, and if I can just - before I come to that supplementary affidavit - so it was served last night.

PN21

If I can just take you, Deputy President, to Mr Burton's first statement filed in these proceedings, and at court book page commencing 118, and, Deputy President, you'll see at paragraph 30 there's a reference to a meeting which occurred on 20 March 2023 involving Ms Rutherford and a number of the fabricators during which certain slides were shared and presented.

PN22

In that context, if I can then go to the supplementary affidavit, or, actually, sorry, before I do, can I just - there's one other thing that I will take Your Honour to just by way of context. Court book page 203 is the results of the investigation presentation which Mr Burton presented to the union and fabricators, and at the third page of that presentation, Deputy President, you'll see that there's analysis and, on the right, source, 'Personal files, payslips and file notes'.

PN23

Now, the supplementary affidavit, all it does is (1) it attaches by way of example the personal file or records relating to one of the employees in respect of whom the calculation was done as reflected on the slides, Mr Curmi, I understand, and the same process was applied to one of the other examples on that slide, but - so it

attaches the employment record for those from 1991, from 1993 and then 1994 to show the change and the loading that was applied, and then in the supplementary - Mr Burton simply explains that he accessed those records by way of example and from where and how he undertook the calculation which was also otherwise set out in detail in the slides which are - which I've taken you to, Deputy President, and it was page 4.

PN24

So this just gives it a little bit of specificity in terms of the underlying records which Mr Burton had regard to. We would seek to rely on that, and, in my submission, there's no real prejudice inasmuch as it's really related to something that's already in evidence and just provides the underlying record with an explanation, and my friend has the opportunity, if she wishes, to question - and we wouldn't oppose - her witness's commenting on it, if she requires.

PN25

THE DEPUTY PRESIDENT: Ms Doumit.

PN26

MS DOUMIT: Yes, Deputy President. Can I just ask that Mr Burton be asked to leave the courtroom just for the purposes of my submission?

PN27

THE DEPUTY PRESIDENT: Yes.

PN28

MS DOUMIT: Deputy President, I do object to the admission of the witness statement, and I do so on a few grounds. I understand that the Commission does have discretion to allow the filing of late evidence. Firstly, I want to point out that this was served quite late last night. At approximately 8.57 pm is when it was emailed to me. I believe the inclusion of this evidence to be highly prejudicial to the applicant on a number of bases.

PN29

The first is that there is no real opportunity to reply to this. I haven't - I have very briefly discussed it with Mr Curmi whose records it is, but Mr Curmi - English is a second language for Mr Curmi. I've attempted to take him through this, but it is quite a technical document insofar as it's not very clear on the face of it, necessary, particularly that second annexure, what it actually purports to be, and so there is an element of speculation required in respect of ascertaining its true value. There is no opportunity for us to truly lead further evidence insofar as the timeframe.

PN30

Mr Rauf has advised that he doesn't actually intend to take any of our witnesses to this witness statement or ask any questions in respect of it, but I also wanted to highlight that the probative value of this witness statement, I would say, does not - is not very high and, therefore, doesn't necessarily outweigh the prejudice to the applicant of its inclusion, and the reason why I say that, Deputy President, is because there are a number of references made in this affidavit to comments

which are - I would object to on the basis that they are speculative and opinion, and I'll take you to one of them just by way of example.

PN31

In paragraph 13, there's a - the first line of that says the Fern Tree pay record for Mr Curmi also has a value of \$571.82 handwritten on it which I understand was the estimate of - and I guess it doesn't really matter what he understands it to be, but if you turn over the page to the actual document, that is Mr Burton's, I guess, opinion as to what some handwritten numbers on a payroll document from 1993 allegedly mean, and he wasn't there at the time.

PN32

He's not the one who produced that document, and he's, essentially, inferring or concluding what those numbers are supposed to represent. I don't even know whether those numbers are from that time. So it's very difficult for me to then cross-examine him in respect of it because that, in my opinion - well, that is opinion evidence from Mr Burton.

PN33

The other thing I wish to say, the respondent's been legally represented from, essentially, the commencement of these proceedings. There was a timetable set down for evidence, and the documents that are used in this witness statement are actually referred to in his first witness statement in the document that Mr Rauf took you to which appears on page 205 of the court book.

PN34

There was ample opportunity for these to be included in the first round of the respondent's evidence. There is no explanation given as to why they are only given now. They're not new documents that only came to light recently, and, therefore, it's unclear as to why they have been included so late. So I guess predominantly, my objection is based on three grounds. One is the prejudice to the applicant and procedural fairness insofar as the response given the short timeframe.

PN35

The second is the actual probative value of the statement being low given it is predominantly opinion evidence based on somebody who did not produce the records nor was around at the time that they were produced and, thirdly, on the basis that the respondent did have solicitors throughout the course of these proceedings and could have produced this evidence earlier. Again, I note that the Commission is not necessarily bound by a strict rule insofar as allowing late evidence, but given the matters that I've raised, I object to its inclusion. Unless there are any questions for me, Deputy President, those are the submissions.

PN36

THE DEPUTY PRESIDENT: No. Thank you. Mr Rauf.

PN37

MR RAUF: Thank you, Deputy President. Can I just briefly respond to the three grounds in turn, starting, perhaps, with the last one which was that the respondent has been legally represented and had ample opportunity. Deputy President, you'll

see that there is quite an abundance of material, and it's one of those scenarios where - - -

PN38

THE DEPUTY PRESIDENT: There's some duplication, too.

PN39

MR RAUF: Sorry, Your Honour - Deputy - - -

PN40

THE DEPUTY PRESIDENT: Some duplication.

PN41

MR RAUF: Indeed.

PN42

THE DEPUTY PRESIDENT: And a lack of an index, which doesn't assist.

PN43

MR RAUF: Yes. I accept, Deputy President, it gets a little bit wieldy to work through, and - but it's not uncommon that in the course of digesting and working through it that certain other information may come to light, as it has here. It's not any ambush or - it's simply an attempt to give a bit more explanation or clarity to what is already in evidence by way of the slides, and there's no dispute that that meeting occurred and that those slides were prepared, and there was some discussion.

PN44

The union hasn't put on any evidence to say 'never happened' or 'we didn't see that'. This is more for the benefit of the Commission to just give some explanation of the underlying document which Mr Burton says accompanied records which he obtained from the files, historical documents. That's the point of it. Then for that reason, it's not something I intend to refer to in any cross-examination. It's for the benefit of the Commission.

PN45

In terms of probative value, I accept that there are aspects of it which the Commission won't look at and not place as much weight on or any weight on, but that's not a reason to reject the whole statement, particularly the underlying documents - the two documents which are attached, and this matter - some difficulty associated with this matter is - arises precisely because there's an issue that's been raised 30 years after the - an arrangement was implemented, and there's an exercise in trying to go back and understand what happened and why it happened. So there is an element of looking back to understand the present in this particular matter.

PN46

And finally, in terms of prejudice, I've addressed that, but, in my submission, we wouldn't have any objection to if Ms - or my learned friend required time to engage with her witnesses and seek further response or - and it's something that can be readily addressed in the timeframe of these proceedings, Deputy President.

PN47

THE DEPUTY PRESIDENT: Well, what's the probative value of this? I mean
- - -

PN48

MR RAUF: The probative value - - -

PN49

THE DEPUTY PRESIDENT: Mr Burton's found some documents.

PN50

MR RAUF: Yes.

PN51

THE DEPUTY PRESIDENT: He's - there were handwritten notations on them by somebody who he cannot identify that occurred 30 years ago, and he estimates that they mean X.

PN52

MR RAUF: Yes. The probative value is this. It's not so much the handwritten notes that I'm concerned with. It's the document with the typed notation which indicates the rates - base rates that applied in August - sorry - May 1993, and then immediately after, there was a change in the rates, and there's no dispute that there was a change and that there was a loading. This is an attempt to have - look at the rates which apply based on the typed records which relate to those periods - historical documents.

PN53

I'm content for the Commission to disregard the handwritten notes. That's explained more by way of context because it's there, but it's the records and what's on the original records, and we're happy to produce the original records, if that assists. That's what we rely on, and the probative value is that they are business records. So there's - and they go directly to the rates of pay applicable immediately prior to and then after the point in time when there was, on the evidence of both parties, a change in the arrangement such that there was a loaded rate, RDOs fell away. Something happened then to the rates and this attempts to give some comparison of at least a shift of why there was a jump and the extent of that jump at that point in time.

PN54

THE DEPUTY PRESIDENT: Ms Doumit, if the materials accepted simply the two annexed documents either clean of handwritten notations or I disregard those notations. Is there still an objection maintained?

PN55

MS DOUMIT: Potentially against the first case I would say no, without the handwritten notes. In respect of the second document my concern remains that it's actually not clear what this document is. So if you have a look it is essentially a table and I am not actually - it would take me a while to decipher exactly what this is supposed to show.

PN56

THE DEPUTY PRESIDENT: It seems to be a part of the table - - -

PN57

MS DOUMIT: Yes. Well - - -

PN58

MR RAUF: I accept that Deputy President and that's unfortunate and I will ask that there be a proper copy provided. Can I just add the annotations they were, for the most part there on the original documentation. So we couldn't obtain clean copies unless we liquid papered or covered over the notes that were already there from three years ago. But I accept that the second document, for whatever reason, it's incomplete copy. A complete copy, in fairness, should be provided and I will ask that that occur.

PN59

THE DEPUTY PRESIDENT: Well, then there's a way to proceed. Ms Doumit then bringing our attention to the first document - - -

PN60

MS DOUMIT: Yes.

PN61

THE DEPUTY PRESIDENT: - - - if it's only tendered as a business record, being a pay slip from 1993.

PN62

MS DOUMIT: Yes.

PN63

THE DEPUTY PRESIDENT: Disregarding handwritten notations, do you maintain an objection?

PN64

MS DOUMIT: Not to that first document, Deputy President.

PN65

THE DEPUTY PRESIDENT: Okay. And I am anticipating this would be a tender of the document, not the affidavit?

PN66

MR RAUF: I'm content to do that, Deputy President.

PN67

THE DEPUTY PRESIDENT: Okay. And if the full table can be provided to Ms Doumit in relation to the second document and we can deal with that when Ms Doumit has had a chance to consider it.

PN68

MR RAUF: Yes.

PN69

THE DEPUTY PRESIDENT: And get instructions.

PN70

MR RAUF: And can I just raise this? In lieu of relying on this supplementary witness statement and just to give some explanation a context of what the document is, can I seek leave to ask Mr Burton what they are and how he used them?

PN71

THE DEPUTY PRESIDENT: Any objections? No objections?

PN72

MS DOUMIT: No, that's fine, Deputy President.

PN73

MR RAUF: Thank you.

PN74

MS DOUMIT: I will object at the time when the questions are asked if required.

PN75

THE DEPUTY PRESIDENT: Okay. Thank you. Is that the end of the housekeeping matters?

PN76

MS DOUMIT: From the applicant, yes.

PN77

THE DEPUTY PRESIDENT: Yes. I think Mr Burton is coming back in now. Is that the case?

PN78

MR RAUF: Yes. Yes, and I understand he has the - - -

PN79

THE DEPUTY PRESIDENT: And there's no difficulty with that?

PN80

MS DOUMIT: No, that's fine.

PN81

THE DEPUTY PRESIDENT: Okay. We're in your hands.

PN82

MS DOUMIT: Yes, thank you, Deputy President. I just intend to give a very short opening only in order to, I guess, focus attention on the clauses which we say require the Commission to make findings in respect of the interpretation offer.

PN83

The first thing I propose to do just because there has been, I guess, some differences between the two cases in respect of what particular words might mean or how clauses might be interpreted, the first thing I was proposing to do was

actually take you, Deputy President, to the clauses. So if I could ask you – page 65 of the court book is the first clause in contention.

PN84

THE DEPUTY PRESIDENT: Yes.

PN85

MS DOUMIT: So here it says – this is under fabricated product – page 3.4.1. Standard work hours will be carried out over five normal working days each week, Monday to Friday eight hours each day except Monday which will be 12 hours - 6.00 am to 6.04 pm, including one midday meal break. And 8.5 hours per day Tuesday to Friday, inclusive of one midday - and I don't think there's any dispute that that should read one midday meal break. But Mr Rauf will correct me if I am wrong. In the event of Monday being a public holiday 12 hours will be worked on a Tuesday. There is no contention in respect of that part of the clause.

PN86

There is no rostered day off in this agreement. So in this agreement refers to the agreement of the standard hours that fabricators work. So the actual enterprise agreement does contain RDO provision. But this particular clause does not allow fabricators, or does not entitle fabricators to an RDO. And that's what that line is supposed to say in my submission.

PN87

And then to offset this the RDO entitlement of two hours per week is paid at time and a half with double time for the last hour. So what we say is, essentially, on Monday fabricators work 12 hours, with a half an hour unpaid meal break. So, in actual fact, over and on Tuesday to Friday they work eight hours a day, excluding the unpaid meal break.

PN88

So over the fortnight they work 87 hours, and technically eight minutes, because they actually finish at 6.04 on the Monday, rather than at 6.00. So in terms of their hours worked they work 87 hours and eight minutes a fortnight.

PN89

But Part B of that clause says that on Monday or other days, when overtime is worked, there will be no afternoon crib break. As a result, work will cease at 6.04 but the pay period will cease at 6.20. What we say in relation to that is they're entitled to a further 16 minute afternoon crib break that is paid, rather than taken.

PN90

THE DEPUTY PRESIDENT: If there's overtime.

PN91

MS DOUMIT: Well, there is every Monday. Because technically they work those additional four hours or three hours every three and a half hours and four minutes every Monday. So what our submission is is they actually are entitled to be paid on this clause for 87 hours and 40 minutes per fortnight. So just to clarify that, the way that I get the 87 hours and 40 minutes is 87 hours and eight minutes

per fortnight, which is clear from the clause they actually work – that's their standard hours. Plus 16 minutes each week as an afternoon paid crib break.

PN92

So that's an additional 32 minutes. So 87 hours and eight minutes plus 32 minutes gives us 87 hours and 40 minutes. Now, what's actually been occurring is that these employees have been working these standard arrangements since about 1993, and they have only been paid for 76 hours. And when I say only been paid for 76 hours, to be fair I think I have to take issue – the hourly rate clause. So if I could ask you then to turn to page 72 of the court book. That sets out the rates of pay for every department covered by this enterprise agreement. And the relevant one is A4.5.6 fabrication, which is on page 72.

PN93

You will see there that there are several grades. Grade one to grade six and there are hourly rates included next to those grades. Now, we say they're hourly rates - for every other department they're hourly rates. What the respondent says, and I will leave it for Mr Rauf to make his own submission, but just for the purposes of being illustrative they say those hourly rates are only paid on 76 hours, because they are so loaded that they cover them for the full 87 hours and 40 minutes that they actually work.

PN94

Now, in my submission, the words of the enterprise agreement do not lend themselves in any way to that interpretation. So there is nothing in the enterprise agreement that I have found or that Mr Rauf in his submissions has alluded to which allows the Commission to interpret the standard rates clause which is how I will refer to it and the hourly rates clause as only allowing payment for 76 hours.

PN95

So what the respondent's case does is points to industrial context and says, 'Based on the fact that they have been paid this way for so long and various other agreements that may have been reached overtime that is what they're entitled to.

PN96

The first submission that I make is that the plain and ordinary meaning of the words in the enterprise agreement is the most important consideration for the Commission and in absence of ambiguity the court should look no further – the Commission, rather, should look no further.

PN97

So what we say is there is no ambiguity in the clause itself. It is very clear. It's as I just put to you. In my submission, those are the ordinary meaning of the words of this enterprise agreement. So, therefore, the Commission in considering the decision in Berri which has obviously been implied for matters in this Commission since then should not look any further. But if you were so minded to conclude that there was ambiguity and that you did need to consider the industrial context. My submission, in the alternative, is that that industrial context does not support the conclusion that the respondent advances, which is that these employees should only be paid for 76 hours.

PN98

I say that on a few grounds. Firstly, there is nothing, as I said in the enterprise agreement, which supports that conclusion. So it is wholly inconsistent with the enterprise agreement – that finding.

PN99

The second point that I make is that predominantly the respondent's evidence is speculative and opinion, in so far as it is made the evidence that's going to adduced, is sworn by people who have not been there at the time when agreements were supposedly made, which they refer to in their witness statements. So there is no contemporaneous evidence of any agreement that was reached as the respondent alleges.

PN100

On the converse side the applicant's evidence actually does have contemporaneous evidence in so far as three of the four witnesses which we called were there in 1993, when these changes were being made.

PN101

This enterprise agreement has been renegotiated many times since 1997 which is when I believe the first enterprise agreement was introduced. Sorry, there is a missing 1993 enterprise agreement. But since 1997 when we have enterprise agreements in evidence this clause has remained unchanged.

PN102

But at every time that this agreement has been renegotiated there has been an opportunity for the respondent to amend it, to reflect the words that it says it should say in respect of fabricators. That has never occurred.

PN103

And throughout the course of the evidence it will become clear that conversely the respondent in supporting documents filed with enterprise agreements has actually supported the interpretation that we put forward today.

PN104

That's all I wish to say by way of opening, Deputy President. Unless you have questions for me.

PN105

THE DEPUTY PRESIDENT: What's the inbuilt overtime component of work completed?

PN106

MS DOUMIT: Yes. So what - - -

PN107

THE DEPUTY PRESIDENT: What I am specifically referring is to your answer to question (a) at page 82 of the court book.

PN108

MS DOUMIT: Yes, thank you. So I should have actually clarified that as well.

PN109

THE DEPUTY PRESIDENT: I am just trying to understand it because - - -

PN110

MS DOUMIT: No. You're right.

PN111

THE DEPUTY PRESIDENT: And I am interested to see how that compares to paragraph 80 of Mr Burton's statement where he goes to if the calculation is correct.

PN112

MS DOUMIT: Yes.

PN113

THE DEPUTY PRESIDENT: I want to understand the difference between the parties.

PN114

MS DOUMIT: Yes.

PN115

THE DEPUTY PRESIDENT: If it's convenient at this stage. If I am - - -

PN116

MS DOUMIT: No, it's very convenient.

PN117

THE DEPUTY PRESIDENT: If I am running away too far.

PN118

MS DOUMIT: No, no. It's very convenient. I did actually intend to explain that because there is some, again, conflicting statements. So what we say is the fact that there is standard worked hours, which is what the clause refers to, are 87 hours and 40 minutes, the standard hourly rate should apply in respect of those hours. So, in other words, they should be paid the hourly rate in the enterprise agreement for 87 hours and 40 minutes plus the RDO entitlement. So one of the – so two of those hours – one of them should be paid at time and a half and one of them should be paid at double time. Because the clause expressly says that in lieu of an RDO you get one hour paid at time and a half and one hour paid at double time.

PN119

So the rates in this enterprise agreement we accept is a loaded rate, only in so far as it's higher. It's high. I wouldn't say it's high compared to the rest of the rates in the enterprise agreement, but it does factor in a component for overtime.

PN120

So you are entitled to get that hourly rate for all your hours worked because it's factored in that you work standard hours that are more than 38 hours per week. I feel like I might have lost you there a little bit. Do you want me to say that - - -

PN121

THE DEPUTY PRESIDENT: It was answering the question about a blended rate in full satisfaction of standard working hours arrangement.

PN122

MS DOUMIT: Yes.

PN123

THE DEPUTY PRESIDENT: And I am just wondering how that informs the answer that you gave. You seem to be saying that well for every hour worked they get the hourly rate.

PN124

MS DOUMIT: That's right.

PN125

THE DEPUTY PRESIDENT: That would seem to then say that the hourly rate has no component of - - -

PN126

MS DOUMIT: But it does. In so far as – so ordinarily in – everyone else who works at Vinidex gets the ordinary rate in the agreement for their 38 hours plus they get an RDO because they work 40 hours per week rather than our employees in question who work more than that. So I am only trying to show that instead of getting that rate for 38 hours like everybody else at Vinidex, and then getting an RDO and then getting overtime rates for every hour worked in excess of 40, like everyone else at Vinidex what they actually get is that hourly rate for all their hours worked plus the RDO component.

PN127

THE DEPUTY PRESIDENT: I understand that's what you're putting. I just – anyway, I'll leave it there.

PN128

MS DOUMIT: Okay – unless there are any further questions - - -

PN129

THE DEPUTY PRESIDENT: No, there's no further questions.

PN130

MS DOUMIT: Thank you.

PN131

THE DEPUTY PRESIDENT: Your first witness?

PN132

MS DOUMIT: Yes, thank you. The applicant intends to call Mr Russell Lowe as our first witness.

PN133

MR RAUF: Just while we're waiting for Mr Lowe, I've got a copy of the second document.

PN134

THE DEPUTY PRESIDENT: Okay.

PN135

MR RAUF: I've just got the one at the moment but I'll show my friend and then perhaps get copies made downstairs, if that was convenient.

PN136

THE DEPUTY PRESIDENT: I think Ms Doumit will need time to consider it.

PN137

MR RAUF: Yes, I understand.

PN138

THE DEPUTY PRESIDENT: So possibly if we have a break, whenever it's convenient, to indicate your position on it, Ms Doumit.

PN139

MS DOUMIT: Yes, thank you.

PN140

MR RAUF: I understand that my friend has seen this previously and does have the document.

PN141

MS DOUMIT: Yes, I should clarify, Deputy President – when you said it looked like it was part of another – it looked like it was incomplete - - -

PN142

THE DEPUTY PRESIDENT: It was.

PN143

MS DOUMIT: It was on that, yes – but I have seen the form.

PN144

THE ASSOCIATE: Please state your full name and address.

PN145

MR LOWE: Russell David Lowe, (address supplied).

<RUSSELL DAVID LOWE, SWORN

[10.33 AM]

EXAMINATION-IN-CHIEF BY MS DOUMIT

[10.33 AM]

PN146

THE DEPUTY PRESIDENT: Please have a seat?---Thank you.

*** RUSSELL DAVID LOWE

XN MS DOUMIT

PN147

MS DOUMIT: Deputy President, I did intend to show the witness a copy of his witness statement. Are you content if I just hand up a copy of the witness statement rather than the entire court book or - - -

PN148

THE DEPUTY PRESIDENT: It may be that Mr Rauf will be asking questions about the court book so it might be convenient, if it's not – it's only 90 pages in. At least the first one.

PN149

MS DOUMIT: I will actually just ask that both be (indistinct).

PN150

MR RAUF: It's a bit difficult for the second one, Deputy President.

PN151

THE DEPUTY PRESIDENT: Yes – 2,204, yes.

PN152

MS DOUMIT: Mr Lowe, you've got two folders in front of you, two binder folders. They're essentially the court book in these proceedings. Can I ask you just look at volume 1 to start?---Yes.

PN153

And can I ask you to turn to page 90, which if it's easier, is behind tab 4?---Tab 4, yes.

PN154

And is that your – is that a witness statement that you have signed in these proceedings?---Yes.

PN155

And is that dated 26 June 2023? Best way to tell is to go to the last page where your signature appears – or second-last page?---Yes, yes, yes.

PN156

Thank you. And can I ask you to turn now in the second volume - - -?---Second volume – second court book?

PN157

Second court book - - -?---Yes.

PN158

- - - to tab 13, page 2,204?---Yes.

PN159

Is that a witness statement that you've also sworn in these proceedings?---Yes.

PN160

And is that dated 31 July of 2023?---Yes.

*** RUSSELL DAVID LOWE

XN MS DOUMIT

PN161

Thank you. I tender both of those witness statements.

PN162

THE DEPUTY PRESIDENT: Any objections?

PN163

MR RAUF: Yes, Deputy President, there are. Before I go there can I just preface it with this: there are two categories. There is one where we note the objection but having regard to the usual practice of the Commission, it may be that it's a matter which is noted but then dealt with as a matter of weight. Then there are objections to other parts which in my submission are a bit more pressing and we would ask be struck out. So they're the two categories. Just going to the first statement of Mr Lowe, at paragraph 10 – and this is more the objection to note in question of weight – fourth line, where he says, 'And I am only paid for these hours'. It's a matter of opinion. As long as it's something confined to the understanding of Lowe as opposed to evidence of fact. That's the objection in respect to that.

PN164

THE DEPUTY PRESIDENT: Do you wish to be heard on that, Ms Doumit?

PN165

MS DOUMIT: No, thank you, Deputy President.

PN166

THE DEPUTY PRESIDENT: Okay, we'll note that.

PN167

MR RAUF: Similarly, in respect of paragraph 11, from the beginning through to the end of the sentence on the fifth line, 'Actual hours I worked'.

PN168

THE DEPUTY PRESIDENT: Ms Doumit.

PN169

MS DOUMIT: Yes, (indistinct).

PN170

THE DEPUTY PRESIDENT: Understand the weight.

PN171

MS DOUMIT: Yes.

PN172

MR RAUF: Paragraph 12 is the second category, where a few lines down - - -

PN173

THE DEPUTY PRESIDENT: Six lines.

*** RUSSELL DAVID LOWE

XN MS DOUMIT

PN174

MR RAUF: Yes, right, Your Honour: 'I believe that my current and previous colleagues who work in this department did not understand' – that's in my submission twofold. One, it's not evidence that is of any fact that Mr Lowe can readily give in terms of what the state of understanding of others, and secondly, Deputy President, it's irrelevant to the question of the construction of the agreement.

PN175

THE DEPUTY PRESIDENT: Ms Doumit.

PN176

MS DOUMIT: Yes, and do I understand Mr Rauf's submission to be that that should be struck out or rather - - -

PN177

THE DEPUTY PRESIDENT: Yes. So from the words, 'I believe', in the sixth line down to the words, 'Worked in the' – ninth line, is that correct?

PN178

MR RAUF: Yes.

PN179

THE DEPUTY PRESIDENT: Yes. Are they pressed?

PN180

MS DOUMIT: Yes, Deputy President – I believe that – I understand the submission in respect of it being Mr Lowe's opinion but I say that's a matter for you to consider so far as the weight you would give it in respect of any conclusion you might make.

PN181

THE DEPUTY PRESIDENT: Well, I think it falls in a different category than the notations previously made and I'd strike those words from, 'I believe', in the sixth line to the words, 'worked in the (indistinct)'.

PN182

MR RAUF: And, Deputy President, a similar objection is raised in respect to paragraph 14 as to difficulty which Mr Lowe says he believes to be in place in terms of attracting others and relating to the defendant.

PN183

MS DOUMIT: I have something to say about the admission. Yes, Deputy President, I just think as a supervisor he is qualified to make that statement. It is his experience and it's further expounded on in his second witness statement where he gives a direct example.

PN184

THE DEPUTY PRESIDENT: Well, it probably falls within the first category rather than the second. So I'll just apply to it whatever weight it might get.

*** RUSSELL DAVID LOWE

XN MS DOUMIT

PN185

MR RAUF: Finally, on the first statement – sorry, I think that was the extent of it on the first one. (Indistinct) to the second. So that's at tab 13. There's an objection to paragraph 9 initially on two grounds – three grounds, rather: again, Mr Lowe is purporting here to speak on behalf of not just himself but others. He speaks of, 'We realised how hard it was to work such long hours'. And then he gives evidence of some discussion with Mr Engleton about changing things. With respect, the second ground is this, that it's just not relevant to any issue of construction of the provision. It's a separate discussion about changing things back but that doesn't elucidate or inform the practice or custom of that arrangement itself. It's a matter of opinion and also not relevant to the exercise being undertaken.

PN186

THE DEPUTY PRESIDENT: Do you say it's in the first category of yours or the second?

PN187

MR RAUF: Second category, Deputy President.

PN188

THE DEPUTY PRESIDENT: Anything further?

PN189

MR RAUF: No, thank you.

PN190

THE DEPUTY PRESIDENT: Ms Doumit.

PN191

MS DOUMIT: Yes, Deputy President: I would say so far as it provides context it should be admitted. That's what it attempts to do in respect of the agreement that was purportedly reached. To the extent that it gives evidence so far as it relates to other people, at the very least it could be confined to his own view in respect of that arrangement.

PN192

THE DEPUTY PRESIDENT: Anything in reply, Mr Rauf?

PN193

MR RAUF: No, I maintain my objection.

PN194

THE DEPUTY PRESIDENT: If it was confined to the witness's own view, striking whatever, 'we', and replacing it with, 'I', and treat it as the first category where it will be given whatever weight.

*** RUSSELL DAVID LOWE

XN MS DOUMIT

PN195

MR RAUF: If it please. Then paragraph 10, Deputy President – argumentative and it's really something that Mr Lowe is opining as to again, in terms of what

occurs in other departments without really giving any evidence of any fact or any (indistinct).

PN196

THE DEPUTY PRESIDENT: Yes.

PN197

MR RAUF: And that, Deputy President, in my submission would fall in the second category.

PN198

THE DEPUTY PRESIDENT: Ms Doumit.

PN199

MS DOUMIT: Deputy President, that last sentence after the comma: 'So far as I'm aware no other department has ever agreed to this arrangement' - - -

PN200

MR RAUF: I don't object to that.

PN201

MS DOUMIT: Okay, sorry – Mr Rauf has just indicated he doesn't object to that part.

PN202

THE DEPUTY PRESIDENT: Sorry – he did object?

PN203

MS DOUMIT: No, he doesn't – he's saying he doesn't.

PN204

MR RAUF: I don't – I withdraw the objection in respect of that last sentence.

PN205

MS DOUMIT: And insofar as the first part, that is his view but I think again it's a matter of weight for the Commission.

PN206

THE DEPUTY PRESIDENT: I think it falls in the second category. I'll strike it up to the words, 'humid presentation'.

PN207

MS DOUMIT: May it please.

PN208

MR RAUF: Thank you, Deputy President. Paragraph 13, and in particular the second sentence and the last sentence: so, 'I do not believe', 'I do not believe'. Again, Mr Lowe is purporting to speak on behalf of other employees. We don't know who but it's a belief that he expresses in relation to others. It's not evidence of any fact.

*** RUSSELL DAVID LOWE

XN MS DOUMIT

PN209

MS DOUMIT: I don't press it.

PN210

THE DEPUTY PRESIDENT: Those lines will be struck. Any others?

PN211

MR RAUF: Yes, Deputy President, there's four more. Paragraph 19, partway through, commencing six lines down: 'I was speaking to Jacqueline Tren. She said words to the effect of, "You work 80 hours per fortnight", et cetera. That's again evidence that he gives of – which is hearsay as much as reliance seems to be placed on what someone else said. Neither is it in strictly reply. Secondly, again, it's a discussion which Mr Lowe says he has but in terms of the purport of that part of that paragraph, in my submission it's not of any utility or probative value in terms of, Deputy President, your task of construing the provision of the agreement and how it applies. That's all, thank you.

PN212

MS DOUMIT: I disagree, Deputy President. He's giving a recollection of a conversation that he had with a member of the respondent's payroll department and it is in reply insofar as he is talking about how he's become aware of the severity of this issue.

PN213

THE DEPUTY PRESIDENT: It does present the respondent with a difficulty in that it comes in reply.

PN214

MS DOUMIT: Yes, but what I say is, it is in reply insofar as the – if you – I could show you if you prefer that I take you to Burton's statement that it's – I can show you the express statements that it's referring to.

PN215

THE DEPUTY PRESIDENT: Paragraph 92 of Mr Burton.

PN216

MS DOUMIT: Yes.

PN217

THE DEPUTY PRESIDENT: In response to the first sentence paragraph 11 in Mr Lowe's witness statement, 'And Mr Lowe has been a (indistinct) for over 30 years'. That's paragraph 92.

PN218

MS DOUMIT: Yes. And that is in response to a comment that Mr Lowe has made in his first witness statement where he says that he didn't realise he was only being paid for 76 hours. And I can take you to that paragraph. And paragraph 12 of the first witness statement. Page 92 of the court book.

*** RUSSELL DAVID LOWE

XN MS DOUMIT

PN219

THE DEPUTY PRESIDENT: Yes, but he didn't – the point is that he didn't put it in paragraph 12 of his original statement. All Mr Burton says at 92 is that he's been receiving payslips, to which he agrees in the first sentence of paragraph 19.

PN220

MS DOUMIT: Yes.

PN221

THE DEPUTY PRESIDENT: And then the point of prejudice arises where it's now expanded out that there was in fact some alleged discussion.

PN222

MS DOUMIT: Yes.

PN223

THE DEPUTY PRESIDENT: It does put the respondent in a difficult position.

PN224

MS DOUMIT: Yes. Well, I guess all I can say is that I can't take it higher than that, then.

PN225

THE DEPUTY PRESIDENT: Anything further, Mr Rauf?

PN226

MR RAUF: Nothing further. Thank you, Deputy President.

PN227

THE DEPUTY PRESIDENT: I think its prejudice overweighs its probative value. I intend to strike.

PN228

MS DOUMIT: Yes.

PN229

MR RAUF: Deputy President, the next one is paragraph 21 and we contend for that to be dealt with in the first category from the words, 'During bargaining meetings, we would regularly be told', there is really no evidence of when and who and what that can be then sensible information to the discussions which are sought to be relied upon in a general way.

PN230

THE DEPUTY PRESIDENT: Then your objection is only what you call a Category 1 objection?

PN231

MR RAUF: Well, on reflection, I think a Category 2 given the way it's couched. That it just has no probative value in my submission.

*** RUSSELL DAVID LOWE

XN MS DOUMIT

PN232

THE DEPUTY PRESIDENT: Ms Doumit?

PN233

MS DOUMIT: Deputy President, content for it to be confined to just he regularly being told. So rather than we, in the collective. But it – to the extent that it's evidence that he can give insofar as his own experience with enterprise bargaining, I think it should remain. I am happy for it to be treated as a Category 1, insofar as a matter of weight for the Commission to consider.

PN234

MR RAUF: I am content with that approach. That confinement in Category 1.

PN235

THE DEPUTY PRESIDENT: That's the approach I am going to take. Substituting 'we' for 'I' in the third line.

PN236

MR RAUF: Thank you. There is two more. And they both fall into the second category. Firstly, 24 which is a discussion which is set to occur with another employee who raised a concern four years ago about a payslip, so somewhat inconsistent with an earlier explanation of when the issue came to light, this suggests – well, I won't say what it suggests, but it's objectionable because it is really hearsay which talks about the understanding and statement made by another employee which in my submission is of no utility or probative value in this matter, given the task at hand.

PN237

THE DEPUTY PRESIDENT: Ms Doumit?

PN238

MS DOUMIT: Yes, Deputy President, I think for the purposes of context, it does shed light on how a second employee perceived the payslip that they received in respect of this issue. And also I think to the extent that it's hearsay insofar as Mr Vance is not being called, it's a matter of weight for the Commission.

PN239

THE DEPUTY PRESIDENT: It does fall in the same category, I think as the paragraph 19. And it seems to be responsive to the same paragraph of Mr Burton's statement because there is no further paragraph referred to prior. So it seems to be another statement in response to that brief statement at paragraph 22 of Mr Burton – about payslips, being provided for 30 years.

PN240

MS DOUMIT: Yes, it does also relate to a comment made in Mr Lowe's first witness statement where he does say that he has difficulty attracting people to the Department because of the low rates of pay and it is an illustrative example of that.

*** RUSSELL DAVID LOWE

XN MS DOUMIT

PN241

THE DEPUTY PRESIDENT: Where does it relate to ability to attract other employees?

PN242

MS DOUMIT: Insofar as Mr Vance then left Vinidex a short time after receiving payslips which reflected, he would only be paid for 76 hours as opposed to the time they actually worked.

PN243

THE DEPUTY PRESIDENT: But it does not say why he left Vinidex or that it was related to that. It just says that he left.

PN244

MS DOUMIT: Yes, but in the context of that conversation, the evidence is that he left on the basis that he wasn't paid correctly.

PN245

THE DEPUTY PRESIDENT: Right. I reject paragraph 24 on the basis that its prejudice outweighs whatever probative value it may have which I wouldn't have considered to be negligible.

PN246

MR RAUF: Thank you. And finally, Deputy President, paragraph 31, but in the light of an earlier one we're content for this to be treated as a Category 1, from the words, 'I did however raise on multiple occasions that we were paid correctly. I was always told this should be addressed outside, et cetera.' Again, the issue being that there is no specificity of when, who, what etcetera. But, we're content of that to be dealt with as a matter of weight.

PN247

THE DEPUTY PRESIDENT: Is that appropriate, Ms Doumit?

PN248

MS DOUMIT: Yes. Thank you.

PN249

MR RAUF: If it please. They were the objections.

PN250

THE DEPUTY PRESIDENT: Okay. Thank you. Hopefully having dealt with objections in that more detailed fashion, at least we will be able to hopefully resolve whatever issues that might arise in relation to other - - -

PN251

MR RAUF: Yes, and it might even be during an adjournment.

PN252

THE DEPUTY PRESIDENT: Yes. It just might streamline things.

*** RUSSELL DAVID LOWE

XN MS DOUMIT

PN253

MR RAUF: I can take my friend through them.

PN254

THE DEPUTY PRESIDENT: So otherwise, we can mark Mr Lowe's first statement Exhibit A1, subject to the amendments made. And his second statement, Exhibit A2.

EXHIBIT #A1 FIRST WITNESS STATEMENT OF RUSSELL DAVID LOWE

EXHIBIT #A2 SECOND WITNESS STATEMENT OF RUSSELL DAVID LOWE

PN255

Thank you for your patience, Mr Lowe. Nothing further with Mr Lowe?

PN256

MS DOUMIT: Nothing further, Deputy President.

PN257

THE DEPUTY PRESIDENT: Okay. Now, Mr Lowe, Mr Rauf will now ask you some questions in cross-examination.

CROSS-EXAMINATION BY MR RAUF

[10.55 AM]

PN258

MR RAUF: Sorry, Mr Lowe, I will – you have got copies of your statements still in front of you?---Yes.

PN259

Yes. Thank you. If I could just ask you to have them there. Now, you've given evidence that you have been employed for 32 years at Vinindex?---Yes.

PN260

So that's on my calculations since 1991?---Yes.

PN261

And you are presently employed at the highest grade which is a Level 6 as a supervisor?---Yes.

PN262

All right. Now, at paragraph 13 and 30 of your second statement, you make a point of saying that you are not a member of the AWU during the earlier agreement negotiations. When did you join the AWU?---A year ago, roughly.

PN263

A year ago. But you have been a member - - -

*** RUSSELL DAVID LOWE

XXN MR RAUF

PN264

THE DEPUTY PRESIDENT: If you could just speak up. Sorry, Mr Lowe?---Speak up?

PN265

Yes?---Yes, okay.

PN266

That microphone does not necessarily broadcast your voice but it is recording for transcript purposes?---Oh, okay.

PN267

So we just need to hear you and I am meant to hear you?---Okay.

PN268

Thank you?---Thank you.

PN269

All right.

PN270

MR RAUF: Mr Lowe, but you have been a member of a union over many, many years?---Yes.

PN271

And that's the National Union of Workers?---Yes.

PN272

And you've been a member of them since 1991?---Yes.

PN273

All right. And the NUW, I think as they were known then, they represented you and fabricators in various agreement negotiations?---Yes, yes.

PN274

All right. And you haven't given any evidence of raising any concern or issue with the NUW during the course of the various negotiations since 1993?---Have I what, sorry?

PN275

You've not given any evidence in your statement about raising an issue or concern at the NUW since 1993, have you?---No.

PN276

All right. Now, you talk of the standard hours in paragraph 5 and at 6, you say that these are the only hours you've worked since – is it 1993?---Correct.

PN277

And since 1993, there has been a blended rate which has been applied?---Blended rate is a term I only heard a year ago. I have never heard that term blended rate before.

*** RUSSELL DAVID LOWE

XXN MR RAUF

PN278

Have you heard the term loaded rate? I think that's a term that you use, is it?---Yes.

PN279

All right. So in other words, well, I will come back to that. But this loaded rate, and I will refer to it as that as well, this loaded rate was implemented in 1993 at the time that the new work arrangements were implemented? The standard hours?---Sorry, I - - -

PN280

Sorry, I apologise if I am being a bit clunky. The loaded rate?---Yes?

PN281

That we just spoke of?---Yes?

PN282

That came in at the same time as the standard hours were implemented in 1993?---Yes. Yes.

PN283

And what the loaded rate meant was that you were paid a rate higher than what was your earlier base rate of pay?---Yes.

PN284

Yes. And your leave entitlements were also being paid based on the loaded rate, not the – not a lower base rate?---That's right. Yes.

PN285

And no other department has a loaded rate which compensates for overtime?---I don't have a great deal to do with other departments?

PN286

Sorry, I - - -?---I just don't have anything to do with other departments. So I don't know. I don't think so.

PN287

All right. You don't think so. You will accept though, that this particular arrangement, this is particular to the fabrication department?---Yes.

PN288

It does not apply to any other department?---No. Not as far as I am aware.

PN289

Yes, and it's been in place since 1993?---Yes.

PN290

And it's been applied under successive industrial instruments or agreements since 1993?---Yes.

*** RUSSELL DAVID LOWE

XXN MR RAUF

PN291

All right. And this loaded rate, and if I use blended rate referring to, I think that you've designated a loaded rate or – this factored in overtime?---It's - - -

PN292

It factored in overtime?---What sort of overtime?

PN293

Well, perhaps if I can ask you to explain that. In paragraph – so of your reply statement at paragraph 7, 8, I think. So see at paragraph 7, sorry, last sentence, 'Other departments may have loaded rates, however, these do not compensate for mandatory overtime.' Do you see that?---Mandatory overtime. Yes.

PN294

Yes?---Yes.

PN295

So by this, you mean, or what you are saying is that your rate compensates or picks up from mandatory overtime?---Mandatory overtime. Yes.

PN296

Yes. So the loaded rate factors in the mandatory overtime?---Yes.

PN297

Yes. And you are aware aren't you, that where you work overtime in addition to the mandatory component, you get separate payment for that?---Sorry, can we - - -

PN298

So you've got your standard hours?---Yes.

PN299

Which will include four hours mandatory overtime?---A week?

PN300

Yes?---Yes.

PN301

Now, if you work overtime in addition to that?---Yes.

PN302

You get a separate payment for that. That's right?---Yes, yes, correct.

PN303

All right. And so what happened in 1993 and subsequently, was when you have the loaded rate applying compared to other departments which didn't have the loaded rate picking up mandatory overtime. Your base rate was increased relative to what people in other departments were getting for this – for their ordinary hours?---To be honest, I don't know what other departments – again, it's none of my business. I have never - - -

*** RUSSELL DAVID LOWE

XXN MR RAUF

PN304

But you know that their rates don't pick up or include any mandatory overtime complaint?---No, no. That's right. Yes.

PN305

All right. Now, it was also in 1993 when RDOs or Rostered Days Off for the fabrication department, stopped?---Yes.

PN306

And the loaded rate also picked up the rostered day off component?---Allegedly.

PN307

All right. Was it your understanding that it would pick it up?---It - - -

PN308

Just, I want to understand what you mean by allegedly?---It – I wasn't a part of a lot of the negotiations because my plan was not to remain with the company. So I only really got interested in it, when I decided to remain with Vinidex long term. I was not planning to stay at Vinidex. I wasn't a part of the negotiations and what was said.

PN309

Which you've earlier given evidence that you were represented by the NUW?---Fabrication (indistinct) yes. Yes. Fabricate - - -

PN310

Yes. Well, that includes you, doesn't it?---No.

PN311

Are you not part of fabrication?---No, yes. I pulled myself away from it because I was not going to stay with Vinidex and I didn't want to vote on a document for somebody else to work under.

PN312

I see?---So I did not vote for the document.

PN313

All right. When did you decide that you would remain long term at Vinidex?---About – approximately six months later.

PN314

All right. So that's in mid - - -?---Late 93, I would say. Yes.

PN315

Well, you started in, I think it was 1991?---Yes.

PN316

So late 1991? Six months later?---No. No. Ninety-three. Because it's - - -

*** RUSSELL DAVID LOWE

XXN MR RAUF

PN317

So 1993 is when you formed a view you would stay longer?---Yes, yes.

PN318

Well, that's when the change happened?---That's right.

PN319

Yes?---Late 93, I agreed to stay long term.

PN320

I see. Right. So that's when you started taking an interest in the terms that applied to you?---Yes.

PN321

All right. Now, paragraph 9, you say that – and I'm paraphrasing, but you talk about six months after the work arrangement was implemented you realised how hard it was to work such long hours. So that's some time in 1993, still?

PN322

---Yes.

PN323

All right. And can I take it by that, do you refer specifically to the 12 hours that was being worked on Monday including the mandatory overtime component?---That's (indistinct), yes.

PN324

All right. Now, you say that you don't recall a review of work arrangements being conducted in 2003, but you accept that – you don't say that it didn't occur, you just say you can't recall participating in meetings?---Yes. I don't – don't know anything about that. Yes.

PN325

Well, you are aware that there was a review conducted, aren't you, generally? Without recalling specifics?---Yes.

PN326

You are aware that there was a review conducted of work arrangements in 2003?---No.

PN327

All right. Well, were you aware of any vote or discussion about changing work arrangements in 2003?---No.

PN328

So is it your evidence in this Commission that you did not vote or express a view about any option to change the spread of hours, standard hours in 2003?---Yes, I don't know anything about that. I – I don't know.

*** RUSSELL DAVID LOWE

XXN MR RAUF

PN329

Okay. Now, at paragraph 15 of your second statement, so Exhibit A2, you describe what you understand is being sought in these proceedings just so that I can understand that, are you saying that 76 hours should be paid at the loaded rate, firstly?---It was.

PN330

Sorry? Maybe if I – can you have a look at your paragraph 15 in the second statement? I just want to understand what – your description of the claim in these proceedings. So at 15(a), so there is three components. You say firstly, 76 hours should be paid at the loaded rate?---What I'm saying is we should be paid as per our pay packet, what our pay packet says.

PN331

All right. Well, just come back to 15 for a moment. You say that what is being sought is that you received 76 hours at the rates in the agreement. So that's the loaded rate at (a)?---Yes, yes.

PN332

Okay. And I just want to make sure I have understood this?---Yes.

PN333

Then you say that the four hours each Monday, so the mandatory overtime also be paid at the loaded rate?---Yes.

PN334

And then thirdly, you say that an additional two hours be paid for the RDO at time and a half for the first hour and double time for the second hour?---Yes.

PN335

All right. So if what you're seeking are those three components and that's what you say should be paid, what's the point of the loaded rate to your understanding?---What – what I asked for originally when I first brought this up a year ago was the truth to our pay packet. That's all I've ever asked is the truth to our pay packet.

PN336

So you're referring not to the agreement but to the pay packet?---Yes.

PN337

To the payslip?---Payslip, yes.

PN338

I see?---That's what started this whole thing.

PN339

Now, you say that this came to your attention a year ago, did you say?---Roughly, yes.

PN340

That's when you joined the AWU?---No, before that.

*** RUSSELL DAVID LOWE

XXN MR RAUF

PN341

I see?---Oh, it was around the same time. I couldn't tell you exactly – it was around the same time.

PN342

All right. At paragraph 20, you say that, 'I did not raise the incorrect way that I was paid for a long time, for several reasons.' That suggests that you had this issue in mind well before a year ago, doesn't it?---Yes, yes.

PN343

But you just never raised it?---No.

PN344

I see?---Oh, raised it with who?

PN345

Well, you didn't raise it with anyone?---I – I - yes, I have yes. (Indistinct).

PN346

I see. All right. And at 21, you refer to during bargaining meetings, so I take it from that that you did have discussions in relation to matters that were discussed during bargaining meetings?---Yes, yes.

PN347

So you did have a level of involvement in bargaining meetings?---Yes, but as a – as a worker. Not as a – on the committee sort of thing of bargaining. No, I was never on the committee, I was just a – a number in a room.

PN348

You're an employee?---That's right.

PN349

Who was represented by a union?---That's correct.

PN350

Thank you. That's the cross-examination, Mr Deputy President.

PN351

THE DEPUTY PRESIDENT: Thank you. Any re-examination?

PN352

MS DOUMIT: No, thank you, Deputy President.

PN353

THE DEPUTY PRESIDENT: Okay. Thank you very much for attending, Mr Lowe, you're excused?---Thank you.

PN354

Thank you.

*** RUSSELL DAVID LOWE

XXN MR RAUF

<THE WITNESS WITHDREW

[11.10 AM]

PN355

MS DOUMIT: Deputy President, I now call Mr Joseph Curmi.

PN356

THE DEPUTY PRESIDENT: Thank you.

PN357

MR RAUF: Deputy President, while we're waiting.

PN358

THE DEPUTY PRESIDENT: Yes.

PN359

MR RAUF: Before Mr Curmi does come to the box, would there be any utility if I have a discussion briefly with my friend about the objections to see if we can – I'm in your hands, Deputy President, however - - -

PN360

THE DEPUTY PRESIDENT: It's a pretty short statement at least, that first one.

PN361

MR RAUF: That's true. That's true. We might get through it more quickly.

PN362

THE DEPUTY PRESIDENT: Whatever's going to be the fastest.

PN363

MR RAUF: Yes. That's what I had in mind.

PN364

THE DEPUTY PRESIDENT: And I'm happy to go off the Bench for five minutes. Or we can take a short – we would normally break in 20 minutes. But we can break for 10 minutes now and come back at 11.20? That might give you time. Whatever you wish.

PN365

MS DOUMIT: I'm happy with that (indistinct).

PN366

MR RAUF: Yes. And that way, what I might do is not just look at Curmi's but all of the statements.

PN367

THE DEPUTY PRESIDENT: Yes, yes.

PN368

MR RAUF: And walk through that and try and expedite.

*** RUSSELL DAVID LOWE

XXN MR RAUF

PN369

THE DEPUTY PRESIDENT: And if there is any additional time needed, just tell my Associate.

PN370

MR RAUF: Thank you.

PN371

THE DEPUTY PRESIDENT: Yes, otherwise I intend to adjourn until 11.20.

SHORT ADJOURNMENT

[11.12 AM]

RESUMED

[11.27 AM]

PN372

THE DEPUTY PRESIDENT: Ms Doumit.

PN373

MS DOUMIT: Deputy President, we call Mr Joseph Curmi.

PN374

THE DEPUTY PRESIDENT: Has there been any agreements on the evidence?

PN375

MR RAUF: Substantial agreement, Deputy President, and - well, actually, maybe it'll help to explain those to you now, if that's - so, just looking at that, shall I wait for the witness to be in the box?

PN376

THE DEPUTY PRESIDENT: Well, just wait for him to sit down, maybe.

PN377

MR RAUF: Yes.

PN378

THE DEPUTY PRESIDENT: Mr Curmi.

<JOSEPH CURMI, SWORN

[11.29 AM]

EXAMINATION-IN-CHIEF BY MS DOUMIT

[11.29 AM]

PN379

THE DEPUTY PRESIDENT: Thank you. Please have a seat. We're just discussing various clauses of your statements that there might be objections to. So we'll just deal witness that, and then you'll give your evidence. Okay?---Thank you, your Honour.

*** JOSEPH CURMI

XN MS DOUMIT

PN380

MR RAUF: Deputy President, turning to the first statement, and my friend will correct me if I get any of this wrong, but paragraph - yes. Sorry. Twelve - paragraph 12, question of weight goes to understanding. So - - -

PN381

THE DEPUTY PRESIDENT: Are we going with categories 1 and 2?

PN382

MR RAUF: Yes.

PN383

MS DOUMIT: Yes.

PN384

MR RAUF: So category 1.

PN385

THE DEPUTY PRESIDENT: Okay. I note that's by agreement.

PN386

MS DOUMIT: Yes.

PN387

MR RAUF: Yes. And then paragraph 14 is struck out. So category 2. Turning then to the reply statement. Now, the paragraph 1 recommences on the second page of that statement. So it's that second one.

PN388

THE DEPUTY PRESIDENT: Second paragraph 1. Yes.

PN389

MS DOUMIT: Apologies.

PN390

THE DEPUTY PRESIDENT: I think you both did it. So - - -

PN391

MS DOUMIT: Okay.

PN392

MR RAUF: So commencing third line, 'I always remember being told' to the end of that sentence is struck out and - - -

PN393

THE DEPUTY PRESIDENT: To the words 'at the time'.

PN394

MR RAUF: 'Time' full stop, yes, is struck out. And the next sentence, 'At no stage' confined to 'was I ever told', and relating to his understanding. So - and category 1, question of weight as to that part.

*** JOSEPH CURMI

XN MS DOUMIT

PN395

THE DEPUTY PRESIDENT: Okay.

PN396

MR RAUF: They were the only objections in respect of these statements.

PN397

THE DEPUTY PRESIDENT: Thank you for that. Very streamlined.

PN398

MR RAUF: Thank you.

PN399

THE DEPUTY PRESIDENT: So, Mr Curmi, we've now dealt with some questions about your evidence, and now I'll just check from Ms Doumit, do you wish to ask any questions?

PN400

MS DOUMIT: Yes, just briefly.

PN401

THE DEPUTY PRESIDENT: Thank you.

PN402

MS DOUMIT: So, Mr Curmi, you have a few folders in front of you. Can I ask you to look at volume 1 first? So it's got volume 1 on the front. Have you got that? Yes. And page 99 which is behind tab 6. Is that a witness statement that you've signed in these proceedings?---Yes.

PN403

And if you turn to the second-last page, you see your signature and the date 26 June?---Sure, yes.

PN404

And that's the date that you signed it 2023. Yes. Thank you. Can I ask you now to turn to - you can close that volume and open volume 3. Sorry. Mr Rauf's just said keep it open because he intends to take you to it. So that's fine if it's easy enough to. Volume 3. And can I ask you to turn to page 2213 which is behind tab 15? It should be close to the end?---Maybe I got the wrong one. Sorry.

PN405

That's okay?---Which - which - which number is it?

PN406

Tab 15. Is that a second witness statement that you've signed in these proceedings?---Yes.

PN407

And on the last page, it's signed by you - - -?---Yes.

*** JOSEPH CURMI

XN MS DOUMIT

PN408

- - - and dated 13 July 2023?---Thirteen July. It's 31st, isn't it?

PN409

Sorry, 31 July, yes?---Thirty-first. Yes, yes.

PN410

Thank you, your Honour. I tender both of those written statements.

EXHIBIT #A3 FIRST STATEMENT OF JOSEPH CURMI

EXHIBIT #A4 SECOND STATEMENT OF JOSEPH CURMI

PN411

May it please.

CROSS-EXAMINATION BY MR RAUF

[11.34 AM]

PN412

MR RAUF: Thank you. Sir, just so I can get this right, how do I pronounce your surname?---Curmi.

PN413

Curmi?---With a C.

PN414

Thank you. Now, Mr Curmi, you've been employed as a fabricator for 42 years?---Yes.

PN415

So since about 1981?---Yes.

PN416

Now, at paragraph 4 and 8 of your second statement, you say that you were not a member of the AWU during the agreement negotiations?---No, not with this union, with the - with another one.

PN417

Who was that union?---I don't remember the name.

PN418

Was it the National Union of Workers or NUW?---I think so. I think so.

PN419

And you had been a member with them for a very long time?---Long time. Yes.

PN420

Yes. And the NUW represented you in the earlier negotiations - agreement negotiations?---That was my understanding because we never went to the meetings.

*** JOSEPH CURMI

XXN MR RAUF

PN421

I understand. Yes. All right. Now, at paragraph 5, you talk about the standard work hours which you had been working - - -?---Yes.

PN422

- - - in the fabrication department, and you say that these started applying in 1993?---Yes.

PN423

When an enterprise agreement came into operation. So I think you say that in paragraph 6. The roster came into effect when the first enterprise agreement came into force in Vinidex. That's right?---Yes, yes.

PN424

Yes. And at the time that you started this new roster or work - standard work hours, as they were called. You started receiving a loaded rate?---Sorry. I didn't
- - -

PN425

You start - you see - you received a different hourly rate when you started working the new standard hours?---Yes.

PN426

And that was a loaded rate?---Yes. What I can understand you, yes.

PN427

Sorry?---I said what I can understand you, yes.

PN428

Yes?---They include everything.

PN429

Yes. What do you mean - so going back to 1993, they gave you this loaded rate which you said includes everything. That's right?---Yes.

PN430

Yes. All right. By that, you mean it includes - there was a compulsory four-hour overtime as a part of the standard hours. It includes that?---Yes.

PN431

It also includes payment for a rostered day off - - -?---Yes.

PN432

- - - because before 1993, you used to get a rostered day off?---That's right.

PN433

But after 1993, you no longer did?---No longer.

PN434

Yes because on your understanding, this was picked up by the loaded rate?---Yes.

*** JOSEPH CURMI

XXN MR RAUF

PN435

Yes. And leave entitlement - sorry. Take a - I withdraw that. So this loaded rate that you got was higher compared to what you had been receiving or the base rate you had been receiving before this new enterprise agreement in 1993?---As my understanding, yes. It was.

PN436

Yes. All right. And all your leave entitlements were also paid on this higher or loaded rate?---I don't think so. No.

PN437

So annual leave, sick leave - - -?---Yes.

PN438

It was based on this loaded rate. That's right?---Yes.

PN439

Yes. All right. And this is an arrangement that applied only to the fabrication department?---That's right.

PN440

That's right. And it's been in place since 1993?---That's right.

PN441

It's been applied under each of the agreements that have come into operation since 1993?---Yes.

PN442

That's right. So they picked up the same loaded rate which includes everything. That's right?---For fabrication.

PN443

Yes. For fabrication?---For fabrication, yes.

PN444

Yes. For fabrication, yes?---Yes.

PN445

Just for fabrication, not anyone else?---That's right.

PN446

That's right?---Yes.

PN447

Yes. Okay. Now, so this loaded rate, it only includes - well, sorry, coming to overtime, the loaded rate includes the four hours that's compulsory as a part of the standard hours, yes?---Yes.

*** JOSEPH CURMI

XXN MR RAUF

PN448

If you were more over time in a week, then you'd get a separate payment for that?---That's right.

PN449

Okay. And that's the overtime rate applied to the loaded rate. So the overtime penalty applied to the loaded rate?---To the rate that we have.

PN450

Yes?---Yes.

PN451

So if you - for instance, in a week, you work another four hours over time - - - ?---That's right.

PN452

You get that - - -?---That's on our - yes.

PN453

- - - 1.5 times the loaded rate for the first three hours and then double time - - - ?---Time for the second - for the last hour.

PN454

- - - for the last or the fourth hour, yes?---Yes.

PN455

Yes. All right. Now, you've seen that there was some evidence given about a review of working arrangements in 2003, and you say that you don't recall attending any meetings. So - - -?---No.

PN456

You're aware, though, that there was a review in 2003?---Not to my knowledge.

PN457

All right. There was discussion then about an option of changing the standard hours in 2003?---No.

PN458

So is it your evidence that you didn't vote or discuss anything - - -?---No.

PN459

- - - about a change?---I didn't because otherwise - I remember to 1993, and I don't remember 2003. That's not to my knowledge. No. I don't - - -

PN460

But it could have happened, but you just don't remember it?---Yes, but they never told us. If it happened, I don't know nothing about it.

PN461

All right. Okay. Now, looking at your loaded rates, so 1993 and then throughout the years until now, you've said that this applied only to fabrication?---Yes.

*** JOSEPH CURMI

XXN MR RAUF

PN462

What it meant was that the employers in the fabrication were getting a slightly higher hourly rate compared to the employees in the other departments?---I don't know that because I don't look at their payslips.

PN463

All right. Well, you know that they don't have any rostered overtime as a part of their arrangements?---Some of them they have.

PN464

I see. All right. But you just don't know?---Yes.

PN465

All right. And you've had the benefit of this loaded rate since 1993?---That's right.

PN466

Yes. And so if - just if the loaded rate wasn't applied in 1993, and the same arrangement was applied that existed beforehand, you would have got your rostered day off, but the hourly rate would be at a lesser rate, yes?---Sorry. I didn't - - -

PN467

Sorry. I withdraw that. It's a bit clunky, but I - - -?---I didn't understand it.

PN468

That's all right. I don't need to ask that. Deputy President, will you give me one moment?

PN469

That's the cross-examination, thank you.

PN470

THE DEPUTY PRESIDENT: Any re-examination?

PN471

MS DOUMIT: Yes, Deputy President.

RE-EXAMINATION BY MS DOUMIT

[11.42 AM]

PN472

MS DOUMIT: Mr Curmi, Mr Rauf asked you about the loaded rate which came in in 1993 and at the time when the loaded rate was introduced, how many hours did you think you would be paid that loaded rate for?---In my knowledge I supposed to be paid for the 88 hours or 87 hours.

PN473

So you understood that you would get that loaded rate?---Rate that's right.

*** JOSEPH CURMI

RXN MS DOUMIT

PN474

For all the hours that you worked. Thank you. No further re-examination.

PN475

THE DEPUTY PRESIDENT: Okay. You're excused, Mr Curmi. Thanks for giving evidence. You can now remain in the court if you wish. Thank you?---Thank you.

<THE WITNESS WITHDREW

[11.42 AM]

PN476

MS DOUMIT: The applicant now calls Martin Micallef. We do have agreed objections. All the objections are agreed on but we might just wait for the witness.

PN477

THE DEPUTY PRESIDENT: You can do that now.

PN478

MR RAUF: Just turning to – so there's two objections. One in respect of each of the statements. The first statement – paragraph eight, second sentence to the end, 'It has always been my understanding.' It's not evidence as to any fact. It's his understanding and it's a matter of weight. So category one.

PN479

THE DEPUTY PRESIDENT: Yes.

PN480

MR RAUF: And turning to the second statement.

PN481

THE DEPUTY PRESIDENT: Just one second, Mr Micallef. If you can just grab a seat. We're just dealing with something. But please sit down. That's great thanks.

PN482

MR RAUF: The second statement, paragraph five, and it's the third sentence, 'It seems extremely unfair' – to the end. That's struck out. It's not pressed. To the end. Yes – 'to do'.

PN483

THE DEPUTY PRESIDENT: Thank you.

PN484

MR RAUF: They were the objections. Thank you.

PN485

THE DEPUTY PRESIDENT: Thank you, Mr Micallef.

<MARTIN MICALLEF, AFFIRMED

[11.43 AM]

PN486

THE DEPUTY PRESIDENT: Your representative will ask you some questions.

PN487

MS DOUMIT: Mr Micallef, you have some folders in front of you?---Yes.

PN488

And I will take you to the tabs within those folders. So the first folder is volume one, which I think is the one underneath the one that's opened. The second open folder there in front of you. And can I ask you to turn to tab seven in that folder. Tab seven? So page 103?---103.

PN489

So the pages are just in the middle bottom but if it's easier you can turn to tab seven?---Yes.

PN490

Yes. You've got that? And that's a witness statement that you have signed in these proceedings?---Yes.

PN491

And if you turn to the second last page your signature appears on that page?---Yes.

PN492

With the date 26 June '23?---Yes.

PN493

Thank you. And then in the volume that was opened on top – Volume 3 – there's another folder. Can I ask you to turn to tab 16? I think it's - - -?---Sixty?

PN494

Sixteen. So the very last few pages. Right at the very end. So behind the tab that says 16?---Right at the end. Yes.

PN495

Yes. So it's page 2216 at the bottom?---Yes.

PN496

Is that another witness statement that you have signed in these proceedings?---Yes.

PN497

And if you turn to the last page that's dated 31 July 2023?---Yes.

PN498

Yes. Thank you. I tender both those witness statements, Deputy President.

*** MARTIN MICALLEF

XN MS DOUMIT

PN499

THE DEPUTY PRESIDENT: The first will be Exhibit A5.

**EXHIBIT #A5 WITNESS STATEMENT OF MARTIN MICALLEF
DATED 26/06/2023**

PN500

And the second Exhibit A6.

**EXHIBIT #A6 WITNESS STATEMENT OF MARTIN MICALLEF
DATED 31/07/2023**

PN501

MS DOUMIT: Thank you.

PN502

THE DEPUTY PRESIDENT: Thank you. You'll be asked some questions now by Mr Rauf in cross-examination.

CROSS-EXAMINATION BY MR RAUF

[11.47 AM]

PN503

MR RAUF: Now, Mr Micallef?---That's correct.

PN504

Have I got that right?---Yes, thank you.

PN505

Mr Micallef, you have been employed as a fabricator for 36 years?---Yes.

PN506

So since about 1987?---'86, I think.

PN507

All right. Okay. Now, in your second statement at paragraph six and nine you talk about or you make a point of saying that you weren't a member of the AWU during the agreement negotiations. When did you join?---One year ago.

PN508

All right. Before that you were a member of the National Union of Workers?---That's correct.

PN509

NUW?---Yes.

PN510

And you had been a member of that union for a very long time?---Yes.

*** MARTIN MICALLEF

XXN MR RAUF

PN511

Yes. And the NUW was the union that represented you in the various agreement negotiations?---Yes.

PN512

Now, if I can just ask you to cast your mind back to before 1993. So before then you received a rostered day off. If you don't remember then that's fine?---Yes. I can't remember.

PN513

Don't remember. All right. Well, there was – you talk in your statement at paragraph five about standard hours which you work. So that's the Monday to Thursday 6.00 to 2.25, and then Friday 6.00 am to – sorry, Tuesday to Friday 6.00 to 2.25 and then longer hours on the Monday?---Yes, that's correct.

PN514

That came into operation in 1993?---I can't recall.

PN515

All right. Just excuse me one moment. Have a look at paragraph five of your first statement. You say there, 'Prior to the formation' – sorry, have you got the first statement?---I don't know. Is that the first book?

PN516

THE DEPUTY PRESIDENT: Yes. Volume 1.

PN517

MS DOUMIT: The other one.

PN518

THE DEPUTY PRESIDENT: Page 103.

PN519

THE WITNESS: Is that it?

PN520

MS DOUMIT: The other book, sorry. The one after that.

PN521

MR RAUF: Have a look at paragraph five. There's numbers at the bottom and it should be page 103 at the very bottom?---Right.

PN522

Have you got that in front of you?---Yes.

PN523

So you say there, 'Prior to the formation of an enterprise agreement I would not work the 12 hours on Monday and I would receive a rostered day off.' So here you give evidence that you, prior to the formation of an agreement, you did actually get an RDO and you didn't work the 12 hours on a Monday. Do you see that?---I see it there, yes.

*** MARTIN MICALLEF

XXN MR RAUF

PN524

Does that jog your memory? So as to what happened before? Or let me ask you. You say prior to the formation of an enterprise agreement. Which enterprise agreement are you talking about there?---I'm not – I'm not sure.

PN525

Well, did you write this statement?---Yes. Yes.

PN526

I am just trying to understand what you've said here, 'Prior to the formation of an enterprise agreement' whether you've got – which agreement you're talking or when? Can you give me any clarity on that?---That was the first enterprise agreement.

PN527

When was that roughly?---Oh – could have been 30 years ago.

PN528

All right. So about 1993. You'd agree with that?---Something like that I think.

PN529

Yes. So before then you did get a rostered day off?---We did before, yes.

PN530

Yes. But then what happened with that first enterprise agreement is you then received an increased rate of pay or a loaded rate and – that's right?---Yes. We did get paid.

PN531

And that picked up rostered overtime which was the four hours you worked on the Monday?---We didn't get paid four hours on Monday.

PN532

Sorry, well I'm asking you about the loadings. So there was a loading applied in 1993, wasn't there? So you got a higher rate of pay?---I don't recall.

PN533

All right. So the arrangement which started off – well, in about 1993 with the formation of an enterprise agreement that only applied to the fabrication department. That's right?---That's correct.

PN534

Yes. And at the time you understood that it was an arrangement only being implemented with the employees in the fabrication department?---Yes.

PN535

Now and that arrangement has continued to apply since 1993?---Yes.

*** MARTIN MICALLEF

XXN MR RAUF

PN536

And under that arrangement, so you have the four hours rostered overtime that's a part of the work that you have to do on Monday?---Say that again?

PN537

So as a part of those standard hours there's a mandatory four-hour overtime component?---No, there wasn't. There's no overtime.

PN538

Sorry, maybe I - - -?---For Monday.

PN539

So do you understand that there's no overtime that you work as a part of the standard hours?---Say that again? Sorry?

PN540

So is it your understanding that there is no roster overtime that you work?---No roster overtime. No.

PN541

All right. Now, so you understand that you've got these standard hours, which is the 12 hours on the Monday, and then eight hours – Tuesday, Wednesday, Thursday, Friday?---It's not standard hours on Monday. Sorry.

PN542

Well, what's on Monday then?---We do the 12 hours on a Monday.

PN543

All right?---No paid overtime on that four hours.

PN544

So there is an overtime?---There's no overtime. We're not getting paid.

PN545

As in you do work overtime on a Monday. Is that what you're saying?---We work 12 hours but not paid - - -

PN546

I see?---For the four hours.

PN547

I see. All right. Well, putting to one side the 12 hours on a Monday and then the eight hours that you do Tuesday, Wednesday, Thursday, Friday, if in addition to that you work overtime hours. So say you work on a Friday you stay back - - - ?---No overtime.

PN548

Sorry. Just wait for the question. Say on a Friday, instead of finishing at 2.25 you work another four hours, you would be paid a separate overtime component for that additional time on a Friday. Yes?---Say that again?

*** MARTIN MICALLEF

XXN MR RAUF

PN549

All right. So if you work say extra hours on the Friday, after the 2.25 finish. Do you understand that part of the question?---I don't work – well, 2.30 I finish on Friday.

PN550

Well, if you did work additional hours past the finish time that would be paid as separate overtime. Yes?---It would be overtime, yes.

PN551

And you're paid separately for that, yes?---Not separate.

PN552

On a pay slip you will have a separate component for the overtime that you might work on a Tuesday, Wednesday, Thursday or Friday?---Say that again. I don't understand you, sorry.

PN553

All right. No, that's okay. If you worked additional hours after your finish time at 2.30 that would be separate overtime that you would be paid for those additional hours?---It would be separate you're saying.

PN554

Yes. And you receive a separate payment - - -?---No. It would be in the overtime.

PN555

Sorry?---It'd be overtime.

PN556

It would be overtime?---Paid overtime.

PN557

Yes. And that's a separate component on your pay slip for those additional hours. Yes?---Okay. Yes.

PN558

Do you agree with that?---Yes, I think so. Yes.

PN559

Thank you. Now, you've given some evidence in your second statement in reply to the Huemmer statement, so paragraphs 7 and 8 of that second statement. You say that:

PN560

I do not remember working arrangements with you or ever meeting Mr Huemmer and I was never told –

PN561

et cetera. Do you see that part of your statement?---Sorry?

*** MARTIN MICALLEF

XXN MR RAUF

PN562

Paragraphs 7 and 8 of your second statement; do you see that?---Yes.

PN563

All right. Here you are replying to the statement of Mr Huemmer. I think you might be looking at the wrong document?---Which one am I looking at?

PN564

So at the bottom there should be a page number 2217, so that's your second statement; the reply statement?---So what was it, sorry?

PN565

Have you got paragraph 7 of your reply statement in front of you?---Yes.

PN566

Here you are saying that you don't remember a working arrangements review in 2003?---No.

PN567

All right. You're not saying it didn't occur, it's just that you can't remember it; is that right?---No, nothing at all. No meeting at all.

PN568

As in you can't remember that?---There was no meeting.

PN569

I see. All right. You recall that there was a discussion about changing the spread of hours so that you didn't work a 12-hour shift?---(No audible reply)

PN570

Do you remember a vote about that or discussion with employees - - -?---Don't remember.

PN571

You don't remember. That's all right. That's the cross-examination, Deputy President.

PN572

THE DEPUTY PRESIDENT: Any re-examination?

PN573

MS DOUMIT: No, thank you, Deputy President.

PN574

THE DEPUTY PRESIDENT: Thank you very much for attending, Mr Micallef. You are excused. You can watch now from the court if you wish.

<THE WITNESS WITHDREW

[11.59 AM]

*** MARTIN MICALLEF

XXN MR RAUF

PN575

MS DOUMIT: The applicant now calls Jason Vono Driver.

PN576

MR RAUF: Deputy President, would it be helpful if I inform you about the objections?

PN577

THE DEPUTY PRESIDENT: Yes.

PN578

MR RAUF: So in respect of Mr Driver, his first statement – I will just check one thing, Deputy President. The last sentence in paragraph 8, the objection goes to understanding and the matter of weight, so category 1.

PN579

MS DOUMIT: The last sentence, what he said - sorry.

PN580

MR RAUF: Yes.

PN581

THE DEPUTY PRESIDENT: 'I have always understood until - -'

PN582

MR RAUF: Paragraph 10 is not read and so wholly struck out. Paragraph 11, the sentence beginning 'I always believe throughout enterprise bargaining' and strike out the words 'employees within the fabrication department' and replace them with 'I', so it's 'I believed', then that is a category 1, so a question of weight.

PN583

Finally on that statement, paragraph 14, second sentence, 'This offset provision was never provided to me', category 1 and it goes to his understanding rather than any facts.

PN584

THE DEPUTY PRESIDENT: Okay. Anything in the second?

PN585

MR RAUF: Yes.

PN586

THE DEPUTY PRESIDENT: Sorry, Mr Vono, we're just clearing something up.

PN587

MR RAUF: Just the one in the second statement and that is paragraph 6, second sentence, is category 1; so it's a matter of opinion and a question of weight.

PN588

THE DEPUTY PRESIDENT: 'Fabrication employees are worse off than other employees', down to page 76.

PN589

MR RAUF: Yes.

PN590

THE DEPUTY PRESIDENT: Okay. That's all?

PN591

MR RAUF: That's all.

PN592

THE DEPUTY PRESIDENT: Thank you. Sorry, Mr Vono Driver.

PN593

THE ASSOCIATE: Please state your full name and address.

PN594

MR DRIVER: Jason Driver, (address supplied).

<JASON VONO DRIVER, SWORN [12.02 PM]

EXAMINATION-IN-CHIEF BY MS DOUMIT [12.03 PM]

PN595

MS DOUMIT: Mr Driver, there are some folders in front of you there. One of them as 'Volume 1' on the front cover, if you can find that one. I believe it's the one right at the bottom?---Yes, this one.

PN596

Yes. Can I ask you to turn to tab 5. Is that a witness statement signed by you in these proceedings?---Yes, that's correct.

PN597

If you go to the second last page, page 97 - - -?---Page 7?

PN598

Page 97, sorry?---Yes.

PN599

Your signature appears on that page?---That's correct.

PN600

And the date 26 June 2023?---Yes.

PN601

Thank you. Now volume 3, which is the other folder there that was open. Can I ask you to turn to tab 14. That is a second witness statement signed by you in these proceedings?---Yes, that's correct.

PN602

And your signature appears on the last page?---Yes.

*** JASON VONO DRIVER

XN MS DOUMIT

PN603

With the date 31 July 2023?---That's correct.

PN604

Thank you. I tender both those - - -

PN605

THE DEPUTY PRESIDENT: So the first will be exhibit A7 and the second exhibit A8.

EXHIBIT #A7 WITNESS STATEMENT OF JASON DRIVER DATED 26/06/2023

EXHIBIT #A8 WITNESS STATEMENT OF JASON DRIVER DATED 31/07/2023

PN606

MS DOUMIT: Nothing further.

PN607

THE DEPUTY PRESIDENT: Mr Driver, you will now be asked some questions by Mr Rauf.

CROSS-EXAMINATION BY MR RAUF

[12.04 PM]

PN608

MR RAUF: Mr Driver, you have been employed as a fabricator for 18 years?---That's correct.

PN609

So since about 2005?---Yes.

PN610

At paragraph 9 of your reply statement you make a point of saying that you weren't a member of the AWU during past agreements. When did you join?---A year ago.

PN611

Before that you were a member of the National Union of Workers; with the NUW?---That's correct, yes.

PN612

You had been a member of that union for a very long time?---Yes.

PN613

That was a union that represented you and other fabricators in agreement negotiations?---Yes, that's correct.

*** JASON VONO DRIVER

XXN MR RAUF

PN614

Now, at paragraph 5 you talk about the five-day roster which is worked. In the time that you have been at Vinidex in fabrication, that is the only work

arrangement that you have worked; the standard hours?---The five days including the Monday as it - - -

PN615

Yes?---Yes.

PN616

Now, you say at paragraph 9 that you understood that – you say:

PN617

This loaded rate covered any overtime or other penalty rates that may have been applicable.

PN618

Just to pause there for a moment, by that you understand that you received a loaded rate in the fabrication department?---I don't understand. Can you repeat the question.

PN619

Yes, of course. In paragraph 9 of your first statement, at the last sentence you talk about your understanding and you refer to a loaded rate; do you see that?---(No audible reply)

PN620

Sorry, that's in your statement.

PN621

THE DEPUTY PRESIDENT: Do you see on page 96 - - -

PN622

MR RAUF: Yes, sorry, I should have - - -

PN623

THE DEPUTY PRESIDENT: So in the first volume.

PN624

MR RAUF: I should have checked you had – so if you can open that up at page 96.

PN625

THE DEPUTY PRESIDENT: See in 96, the last line or the last sentence of paragraph 9, so starting at the end of the fourth line?---So page 96?

PN626

Page 96?---Yes.

PN627

Paragraph 9, so you see the '9' about halfway down the page?---Paragraph 9.

*** JASON VONO DRIVER

XXN MR RAUF

PN628

And at the end of that paragraph, 'I have always understood', et cetera?---Yes.

PN629

MR RAUF: So this is the statement which you have signed and accept is your statement?---Yes.

PN630

You read and checked that this is correct?---So this statement I'm giving forward, we work for 88 but we're getting paid 76 - - -

PN631

Sorry, I haven't asked another question yet, but what I want to understand is see how you say here that you understood you received a loaded hourly rate – do you see that?---Loaded hourly rate - - -

PN632

So:

PN633

I always understood that I would receive a loaded hourly rate.

PN634

?---Yes.

PN635

Do you see that?---Yes.

PN636

The loaded hourly rate, what do you mean by 'loaded'?---'Hourly rate for hours worked' - - -

PN637

If you need me to ask a question, just let me know and I can do so?---Well, I - - -

PN638

I just want to understand your evidence. You refer to a loaded rate. What do you mean by 'loaded rate'?---I guess the hourly rate we're getting.

PN639

Yes, well, you say at the last sentence of that same paragraph:

PN640

I always understood that this loaded rate covered any overtime or other penalty rates.

PN641

Do you see that?---(No audible reply)

*** JASON VONO DRIVER

XXN MR RAUF

PN642

Mr Driver, all I want to put to you is - just to make sure I've understood it – what you're saying here is that you understood that by the loaded rate it picked up the overtime which you worked on Monday and other penalty rates; that's right?---(No audible reply)

PN643

That is as you understood?---(No audible reply)

PN644

That's right?---Can I go back - - -

PN645

Well, just stay with me for a moment. I'm looking at your evidence?---Yes.

PN646

And I just want to understand it. You have used the term 'loaded hourly rate' and when I read the last sentence, by that I understand that you're saying the loaded hourly rate included or covered overtime and other penalty rates; yes?---(No audible reply)

PN647

That is as you understood?---(No audible reply)

PN648

Mr Driver, I'm reading your evidence?---Yes.

PN649

I'm not trying to be difficult or – I just want to understand what you have said here?---That's exactly what I said, yes.

PN650

Yes, all right. The overtime that you're referring to here are the additional hours that you worked on Monday each week; that's right?---(No audible reply)

PN651

Yes?---(No audible reply)

PN652

THE DEPUTY PRESIDENT: If you're agreeing – see there is a microphone?---This one here?

PN653

All of this is being transcribed?---Do we talk - - -

PN654

It doesn't actually make you louder, but if you nod we don't know what your answer was?---Okay.

PN655

So we need either a yes or a no.

*** JASON VONO DRIVER

XXN MR RAUF

PN656

MR RAUF: Thank you, Deputy President.

PN657

THE DEPUTY PRESIDENT: And I think your answer was yes; is that correct?---Yes.

PN658

Thank you.

PN659

MR RAUF: Thank you. Mr Driver, so what you've put in paragraph 5 - so that's the five-day roster that you say you work. Now, if you work additional hours, say, on a Tuesday or a Wednesday, you'd work another four hours after 2.30, you are paid separately for that as overtime; that's right, isn't it?---That's correct.

PN660

Yes?---So what are you saying? If I'm working on a Wednesday - - -

PN661

And you work additional hours past the - - -?---Doing the overtime.

PN662

- - - roster time, you get extra overtime payment for that?---Yes.

PN663

That's right?---Yes. That's correct.

PN664

And the overtime which you get is the overtime on the loaded rate. So if you work, say, four hours, the first three hours are time and a half, and then the last hour is double time of the loaded rate. That's right?---Yes. That's correct.

PN665

And that's what's applied ever since you've been there?---Yes.

PN666

Yes. But the loaded rate picks up the work that you otherwise do on the Monday, the additional hours, and that's why it's loaded. That's right?---Can you repeat that, please?

PN667

Yes. So - and we did cover this earlier, admittedly, but the loaded rate or the loading picks up the four hours overtime which you do on the Monday, and that's why it's loaded, yes?---Yes, yes.

PN668

Okay. Do you know when the loaded rate came into operation or - - -?---I wouldn't have a clue.

*** JASON VONO DRIVER

XXN MR RAUF

PN669

All right. That's fine. So you're not yourself sure how the loaded rate was actually calculated?---No. I wouldn't have a clue.

PN670

Well, is that no, sir?---I wasn't there. I started in 2005.

PN671

Yes. So come back to my question. You yourself don't know how the loaded rate was actually calculated. Is that what you say?---I don't know. I don't know.

PN672

All right. So you don't know, for instance, whether or not it includes a component for the rostered day off?---I don't know.

PN673

All right. And this arrangement has, as far as you know, always applied - or so the loaded rate and the hours that you've worked, that's always been in place since 2005 when you started at the company?---Can you - I don't know.

PN674

Well - - -?---Repeat the question, please.

PN675

Yes, of course. So the hours which you talk about in paragraph 5 and then the loaded rate which you talk about in paragraph 9, they have always applied since you've been there in 2005?---Yes.

PN676

And so it's been picked up and applied under each of the successive or the different agreements that have applied to you and other employees in the fabrication department?---Yes.

PN677

And you understand, though, that that's - the loaded rate is something which only applies to the fabrication department?---I don't know.

PN678

Sorry?---I don't know.

PN679

You don't know. I see. The hours which you work and that you - and not getting an RDO but getting a loaded rate, that only applies to the fabrication department?---Well, I don't know what other people - yes. So - - -

PN680

Okay. Well, so if you don't know what other people get and you don't know their work conditions, you can't make any comparison, can you?---Comparison to what, hourly wages?

*** JASON VONO DRIVER

XXN MR RAUF

PN681

So you can't, for example, say as you do at paragraph 6 of your second statement, page 2212, that fabrication employees are worse off?---Two-two-one-two.

PN682

Fact is you just - on your evidence now, you don't know what happens in the other departments, do you?---I don't know.

PN683

All right.

PN684

THE DEPUTY PRESIDENT: Sorry. What was your answer?---I don't know.

PN685

You don't know. All right.

PN686

MR RAUF: That's the cross-examination, Deputy President.

PN687

THE DEPUTY PRESIDENT: Any re-examination?

PN688

MS DOUMIT: Yes, please.

RE-EXAMINATION BY MS DOUMIT

[12.17 PM]

PN689

MS DOUMIT: Mr Driver, Mr Rauf asked you about the loaded rate. Do you remember that?---Yes.

PN690

And what he's referring to there - just don't answer just in case Mr Rauf wants to object, but what he's referring to there is the rate in your enterprise agreement.

PN691

MR RAUF: Sorry. That's - I do object. That's not correct. I was simply taking this witness to his evidence and understanding what that meant, and he's answered that.

PN692

MS DOUMIT: Okay. I withdraw the question. How many hours did you believe you would be paid that loaded rate for?---For the hours we worked which is 88.

PN693

Thank you. No further questions.

*** JASON VONO DRIVER

RXN MS DOUMIT

PN694

THE DEPUTY PRESIDENT: Thank you. You're excused. You can now follow the proceedings from the court, if you wish.

<THE WITNESS WITHDREW

[12.18 PM]

PN695

MS DOUMIT: That's the evidence for the applicant, Deputy President.

PN696

THE DEPUTY PRESIDENT: Thank you.

PN697

MS DOUMIT: I haven't had a chance to discuss our objections to the respondent's evidence, just foreshadowing that that's the next step. Would you prefer that we have a chance to discuss that before recommencing or - - -

PN698

THE DEPUTY PRESIDENT: Do you want to take five minutes or do you want to take an early lunch?

PN699

MS DOUMIT: My preference is an early lunch, if that's - just a clean break between the two parties, but - - -

PN700

THE DEPUTY PRESIDENT: Well, then, there's that, too. Yes.

PN701

MS DOUMIT: Yes.

PN702

MR RAUF: I'm content with that, Deputy President.

PN703

THE DEPUTY PRESIDENT: If we come back at 12.30, is that okay?

PN704

MS DOUMIT: One-thirty.

PN705

THE DEPUTY PRESIDENT: Sorry, 1.30.

PN706

MS DOUMIT: Thank you, Deputy President.

PN707

THE DEPUTY PRESIDENT: Yes. It's very hard to read that. There's a lot of glare. One-thirty, it'll be. Thank you very much.

LUNCHEON ADJOURNMENT

[12.19 PM]

*** JASON VONO DRIVER

RXN MS DOUMIT

RESUMED

[1.42 PM]

PN708

THE DEPUTY PRESIDENT: Mr Rauf.

PN709

MR RAUF: Thank you, Deputy President. And we appreciate the further time given. We have had an opportunity to go through the objections which the Union had and have arrived at an agreed position in respect of all of the statements. And I will let my friend, Ms Doumit, go through those at the appropriate time.

PN710

We will have three witnesses in the case of the respondent in order. They are, Mr Alan Wayne Burton who is the Acting Central Region Manufacturing Manager for the Smithfield site.

PN711

Secondly, we will have James Thomas Huemmer, the principal consultant at Shiftwork Solutions and then lastly, Mark Gordon O'Keefe, who is General Manager of Infrastructure at Smithfield site. And just before I do call the first witness, can I just check Deputy President, there was an index that we had prepared. Hopefully, is of assistance.

PN712

With that, I call the first witness.

PN713

THE DEPUTY PRESIDENT: Do you want to outline the objections? The state of the objections first?

PN714

MR RAUF: Yes, yes. Certainly. Certainly. That makes sense. Yes.

PN715

MS DOUMIT: Thank you, Deputy President. So is it for all the witness statements or just Mr Burton's?

PN716

THE DEPUTY PRESIDENT: It might be convenient. Is that okay?

PN717

MS DOUMIT: May as well, yes. Agreed.

PN718

THE DEPUTY PRESIDENT: Thank you.

PN719

MS DOUMIT: So just starting with Wayne Burton's statement.

*** JASON VONO DRIVER

RXN MS DOUMIT

PN720

THE DEPUTY PRESIDENT: Yes.

PN721

MS DOUMIT: Paragraph 19. That paragraph is a Category 1 agreement.

PN722

THE DEPUTY PRESIDENT: Sorry?

PN723

MS DOUMIT: That paragraph is Category 1.

PN724

THE DEPUTY PRESIDENT: So Category 1.

PN725

MS DOUMIT: Yes.

PN726

THE DEPUTY PRESIDENT: I am wondering if this is going to be taken up in more broader use in the Commission.

PN727

MS DOUMIT: Maybe it should be. Paragraph 28, the second sentence from, 'Although I found the Union position'.

PN728

THE DEPUTY PRESIDENT: Sorry. From 'Although I found'?

PN729

MS DOUMIT: Yes. To the end of the paragraph.

PN730

THE DEPUTY PRESIDENT: Yes.

PN731

MS DOUMIT: Category 1. It's paragraph 41.

PN732

THE DEPUTY PRESIDENT: Yes.

PN733

MS DOUMIT: The second last sentence, which is on page 126. Based on the application of the pay methodology. That is struck out. Paragraph – Category 2.

PN734

THE DEPUTY PRESIDENT: Okay.

PN735

MS DOUMIT: Paragraph 56.

PN736

THE DEPUTY PRESIDENT: So 50.

PN737

MS DOUMIT: Fifty-six.

PN738

THE DEPUTY PRESIDENT: Fifty-six. Okay.

PN739

MS DOUMIT: 'In undertaking my enquiry'. So the first sentence down to 'This did not include the Fabrication Department as the RDO had already been bought out'.

PN740

THE DEPUTY PRESIDENT: Yes.

PN741

MS DOUMIT: Category 1. But further down, the second last sentence after the comma, 'In the same way in which Vinidex says it had done for Fabricators', struck out as Category 2.

PN742

THE DEPUTY PRESIDENT: So you stopped at?

PN743

MS DOUMIT: Just up to the end of that parenthesis.

PN744

THE DEPUTY PRESIDENT: Fabricators, yes. Thank you.

PN745

MS DOUMIT: Paragraph 93, after the quotations. 'Mr Lowe's concern had been'. That entire sentence, struck out.

PN746

THE DEPUTY PRESIDENT: Sorry. Second sentence. 'Mr Lowe's concern has been'.

PN747

MS DOUMIT: Yes. That sentence struck out. Category 2.

PN748

THE DEPUTY PRESIDENT: To all parties concerned, struck out Category 2.

PN749

MS DOUMIT: Yes.

PN750

THE DEPUTY PRESIDENT: Yes.

PN751

MS DOUMIT: At paragraph 100, the last sentence.

PN752

THE DEPUTY PRESIDENT: Yes.

PN753

MS DOUMIT: 'Limited to his understanding', Category 1.

PN754

THE DEPUTY PRESIDENT: Yes.

PN755

MS DOUMIT: Paragraph 101. The last sentence. 'Limited to his understanding'. Category 1.

PN756

THE DEPUTY PRESIDENT: The last sentence? 101?

PN757

MS DOUMIT: 101. Yes.

PN758

THE DEPUTY PRESIDENT: The whole last sentence?

PN759

MS DOUMIT: Yes.

PN760

THE DEPUTY PRESIDENT: Okay. So.

PN761

MS DOUMIT: And that's the end of the objections for that one.

PN762

MR RAUF: And I agree with those, Deputy President. Just to be clear. So the one in that last sentence at 101, that was just Category 1 sequentially.

PN763

THE DEPUTY PRESIDENT: Yes, I had it down as a Category 1.

PN764

MR RAUF: Yes. Thank you.

PN765

MS DOUMIT: And then the statement of Mark O'Keefe, Tab 10. Paragraph 23.

PN766

THE DEPUTY PRESIDENT: Thirty-three?

PN767

MS DOUMIT: Twenty-three.

PN768

THE DEPUTY PRESIDENT: Twenty-three. Sorry.

PN769

MS DOUMIT: That's okay.

PN770

THE DEPUTY PRESIDENT: Yes.

PN771

MS DOUMIT: The second sentence. 'I understand and believe that Mr Huemmer', down to the end of that paragraph including the subsection. The subparagraphs, struck out. Category 2.

PN772

THE DEPUTY PRESIDENT: Yes.

PN773

MS DOUMIT: And paragraph 46.

PN774

THE DEPUTY PRESIDENT: Yes.

PN775

MS DOUMIT: The last sentence, 'I understand and believe that Mr Huemmer' down to the end of that paragraph struck out. Category 2.

PN776

THE DEPUTY PRESIDENT: Okay.

PN777

MS DOUMIT: And then the next witness statement.

PN778

THE DEPUTY PRESIDENT: Mr Huemmer.

PN779

MS DOUMIT: Mr Huemmer. Paragraph 20. The last sentence.

PN780

THE DEPUTY PRESIDENT: 'That documentation shows'?

PN781

MS DOUMIT: Yes. Category 1, limited to his understanding.

PN782

THE DEPUTY PRESIDENT: Right. Yes.

PN783

MS DOUMIT: Same. So paragraph 21 from, '(Indistinct) Solutions', so from the second sentence down to the end of the paragraph. Same. 'Limited to his understanding.'

PN784

Paragraph 25, first sentence. 'Limited to his understanding', Category 1. Paragraph 34, so the paragraph – we just want it to be clear that the paragraph is still in reply to paragraphs 11 and 12 of Mr Lowe's witness statement. But the words are contrary to my interactions with him down to the end of that sentence, are struck out.

PN785

THE DEPUTY PRESIDENT: To the end of that sentence, working arrangements review?

PN786

MS DOUMIT: Yes, that's right.

PN787

THE DEPUTY PRESIDENT: Struck.

PN788

MS DOUMIT: Thirty-seven. The last sentence. Category 1.

PN789

THE DEPUTY PRESIDENT: 'At the time' – no. 'I recall'?

PN790

MS DOUMIT: 'I recall.' Yes.

PN791

THE DEPUTY PRESIDENT: Yes, what basis?

PN792

MS DOUMIT: On the basis that it's not explained exactly how he came to - - -

PN793

THE DEPUTY PRESIDENT: Category 1 or 2?

PN794

MS DOUMIT: Category 1.

PN795

THE DEPUTY PRESIDENT: I can see it.

PN796

MS DOUMIT: I thought you were asking me to justify.

PN797

THE DEPUTY PRESIDENT: No, no.

PN798

MS DOUMIT: And I wasn't prepared for it.

PN799

THE DEPUTY PRESIDENT: No, I am going with the flow.

PN800

MS DOUMIT: Okay. Thank you. Excellent. Thank you, Deputy President. Those are the objections.

PN801

THE DEPUTY PRESIDENT: They're the objections. They're all noted and marked. Thank you very much.

PN802

MR RAUF: Thank you. Thank you. And that's by consent. Actually, that's categorisation is picked up in the Fair Work Guideline, so it might be included as a footnote.

PN803

THE DEPUTY PRESIDENT: You might have to wear it, any backlash.

PN804

MR RAUF: Can I, on that note, I call the respondent's first witness, Mr Alan Wayne Burton.

PN805

THE ASSOCIATE: Please state your full name and address?

PN806

MR BURTON: Alan Wayne Burton, (address supplied).

<ALAN WAYNE BURTON, AFFIRMED [1.51 PM]

EXAMINATION-IN-CHIEF BY MR RAUF [1.51 PM]

PN807

MR RAUF: Thank you. Mr Burton, just for the record, can I ask you to state your full name again, please?---Alan Wayne Burton?

PN808

And can I ask you to state your business address?---(Address supplied.)

PN809

And you are currently employed by Vinidex as the Acting Central Region Manufacturing Manager based at the Smithfield site?---Yes.

PN810

And you're also employed as the National Manufacturing Excellence Manager?---Yes.

PN811

Now, you have been provided with two folders. Can I ask you to open up Volume 1 that first folder, which should contain a witness statement at the front. Do you have that?---I do.

*** ALAN WAYNE BURTON

XN MR RAUF

PN812

And that's a witness statement which contains 104 paragraphs. So if you go to the back of that statement. And it includes 35 annexures. Do you confirm that this statement is true and correct to the best of your knowledge and belief?---I do.

PN813

I tender that statement.

PN814

THE DEPUTY PRESIDENT: Noting the objections, that will be Exhibit R1.

EXHIBIT #R1 WITNESS STATEMENT OF ALAN WAYNE BURTON

PN815

MR RAUF: Thank you. Thank you, Mr Burton. I just had some preliminary questions for you. Can I ask you to – I want you to open up what is Attachment WB6. Has some slides, prepaid – or slides that were prepared. Do you have that in front of you?---I do.

PN816

Now, these are slides that you prepared?---Correct.

PN817

All right. And why did you prepare these?---Why?

PN818

Yes?---I was seeking to understand the history of the payer rates for the employees involved as they had discussed with me they had a concern. And I wanted to share with them my findings.

PN819

All right. And did you do that?---I did do that.

PN820

And so these slides were shared were they or - - -?---They were. They were shared with the fabricators and with Ms Rutherford from the Union.

PN821

All right. If I can ask you to go to the third page. And that shows actual payslip rates compared to a blended rate, July 93 to May 94. Do you see that?---Correct.

PN822

But on the right hand side, it says, 'Source, personal files, payslips, file notes', do you see that?---Correct.

PN823

Yes. All right. And I'll just show you two documents. Can I hand up – Deputy President, I've got a spare copy if you need, unless you've already - - -

*** ALAN WAYNE BURTON

XN MR RAUF

PN824

THE DEPUTY PRESIDENT: I'll need one of the table, because I don't have a complete.

PN825

MR RAUF: Yes, all right. That one, yes. I'll give that to you now as well.

PN826

THE DEPUTY PRESIDENT: Thank you.

PN827

MR RAUF: All right. So, the first document that I am showing you. Can I ask you to describe what document that is?---It's an employee record card by a company called Fern Tree, that in the nineties must have been the payroll system that Vinidex was using.

PN828

And where was this obtained from?---From personal files kept in the vault at the office.

PN829

What's the vault?---A secure area where payroll and HR can access personal files.

PN830

All right. So there's payroll and HR and Vinidex?---Correct.

PN831

And so the particular document I have shown to you, who does this relate to and what information here did you have regard to?---This is Mr Joseph Curmi's employee record card from 11 July 93. And I was interested in the base pay and the ordinary rate that was paid at that time.

PN832

All right. All right. So if I look at that, there's the employee name at the top, Curmi, J. And then there's a date 11 July 93. Where do I see the rate of pay?---On the right hand top corner.

PN833

Yes?---You'll see the base pay.

PN834

Yes?---As a total of \$451 a week.

PN835

Yes?---And the ordinary rate is below that at \$11.86842 an hour. So that times 38 gives you the 451.

PN836

I see. And can I then show to you a second document. Sorry.

*** ALAN WAYNE BURTON

XN MR RAUF

PN837

MS DOUMIT: Yes, Deputy President, I do intend to object to the addition of my friend's second document into evidence.

PN838

THE DEPUTY PRESIDENT: Okay.

PN839

MS DOUMIT: I don't know if it's convenient, but I'll do that now.

PN840

THE DEPUTY PRESIDENT: Well, it depends upon the basis of the - which you reject - object.

PN841

MS DOUMIT: Yes. So a few bases. Firstly, on the basis of the prejudice to the applicant which I outlined this morning, but also on the basis that it's very unclear from this document what it actually is. I can accept that the first document appears to be a business record, but to the extent that this witness might be asked to comment on a document that just appears to be a table without any knowledge as to who's prepared it, I'd say any evidence he gives in respect of it will be hearsay evidence and opinion.

PN842

THE DEPUTY PRESIDENT: What is this document?

PN843

MR RAUF: I was going to ask the witness to explain that, but as I understand it, it similarly is a pay record on the personal file of the employee kept by the company.

PN844

THE DEPUTY PRESIDENT: Sorry.

PN845

MR RAUF: All right. Can I hand up a - - -

PN846

THE DEPUTY PRESIDENT: Well - - -

PN847

MR RAUF: Sorry.

PN848

THE DEPUTY PRESIDENT: Ms Doumit, if that is the source - - -

PN849

MS DOUMIT: Yes. That - I accept that's the source, but I don't - I may accept that's the source.

*** ALAN WAYNE BURTON

XN MR RAUF

PN850

THE DEPUTY PRESIDENT: You've got a prejudice point still outstanding. I understand that.

PN851

MS DOUMIT: Yes. But even beyond the prejudice point, even if that's the source of this document, what it actually purports to be is unclear, and to the extent that this witness will give any evidence as to what it is, that would be hearsay and opinion because he didn't create this document. It's not clear on the face of it what it actually is, and it's not clear who created it, for example. So to the extent that he's going to speak to it, none of his evidence, I think, would be given any reasonable probative value on that basis.

PN852

THE DEPUTY PRESIDENT: What's the prejudice?

PN853

MS DOUMIT: The prejudice is predominantly in respect of the timing. If we were going to produce any documents in answer to this, I don't have the time to do so.

PN854

THE DEPUTY PRESIDENT: It can be cured, that prejudice.

PN855

MS DOUMIT: In terms of us putting on further witness statements or further evidence?

PN856

THE DEPUTY PRESIDENT: Possibly, yes.

PN857

MS DOUMIT: If that's open to us, then that would potentially cure the prejudice, but I still maintain that any evidence that's given in respect of this document would not comply with the strict rules of evidence insofar as it's not apparent on its face that it's a business record, and it's not apparent what it actually represents.

PN858

THE DEPUTY PRESIDENT: Okay. Well, preserving your prejudice point which we can deal with in a very common sense way, the document does appear to be a business record. For somebody who works in a business and finds a document within the records of the business, it's not hearsay for them to present it or say what they know about it, but I'm not cutting off any objection you wish to make on the questioning of this particular witness, but I'm not persuaded to reject this document. Thank you.

PN859

MS DOUMIT: May it please.

*** ALAN WAYNE BURTON

XN MR RAUF

PN860

MR RAUF: Thank you, Deputy President. Mr Burton, can I hand you a second document? Now, is this - can I ask you to explain what this document is?---So this is another document I found in the personal files of the employees, and I was interested in the salary figure as I was attempting to find a pay rate to compare to other data points across the 30-year period.

PN861

So where did you obtain this particular document from, or whose file?---This particular document is from Joseph Curmi's personal file, the same file that I extracted the first document you gave me.

PN862

Yes. And what - I withdraw that. And so if I look, I think, on the left-hand side at the top, there's J. Curmi, the name?---Correct.

PN863

And what was the information you had regard to in this document?---I had done an initial estimate of the possible way of blended rate calculation, and I'd come very close to the salary number that's reflected on that document. So I was very interested to see what that could work out to be as a pay rate.

PN864

And what was the pay rate that you were able to obtain?---Well, over 76 hours. That would be 15.13671, as I noted on the document.

PN865

All right. I tender those two documents, Deputy President.

EXHIBIT #R2 PAY SLIP

EXHIBIT #R3 TABLE RELATING TO MR CURMI

PN866

Just finally, Mr Burton, can I ask you to - with reference to what you've done on the slides and, in particular, page 3, how did you use the information from this - these two documents to tabulate or reflect what you have on page 3 of the slides?---So the first document you provided to me is reflected in the blue rectangles.

PN867

Yes. So that's the pay rate as at July - - -?---Ninety-three.

PN868

Yes. And, so, which particular one - person 1, 2, 3, 4 - - -?---Person 1 in this case is Joseph Curmi.

PN869

I see. So the blue box shows 11.86, and that's as at July 1993?---Yes.

*** ALAN WAYNE BURTON

XN MR RAUF

PN870

And then what's the green box at the top?---The green box is the - from the second document you provided me where I worked the effective pay rate over 76 hours for that salary.

PN871

All right. And so in the middle, that reflects an increase of 28 per cent?---Correct.

PN872

And was that - how did the - what you did for persons 2, 3 and 4 compare to what you'd explained with person 1?---So the orange triangle is where the estimate of the blended rate landed or resulted, and I then did the same comparison for persons 2, 3 and 4 based on their records. They have, as you can see, a higher rate in May '94 than Mr Curmi.

PN873

I see. So they were persons also from the fabrication department?---Correct.

PN874

And the records you obtained, were they the same as - or corresponding to what we've looked at with exhibits 3 and - - -?---Yes, they are.

PN875

R3 and 4?---Correct.

PN876

All right. Thank you. That's the evidence-in-chief, Deputy President.

PN877

THE DEPUTY PRESIDENT: Where are they, the source documents?

PN878

MR RAUF: There's no source documents for persons 2, 3 and 4. It's just person 1 by way of example.

PN879

THE DEPUTY PRESIDENT: Well, how can the table reflect 2, 3 and 4?

PN880

MR RAUF: And I think - so what I've - what I understand is the same approach was adopted. Albeit the source documents for those haven't been included as a part of this in the evidence.

PN881

THE DEPUTY PRESIDENT: Why not?

PN882

MR RAUF: To try and keep it a little bit streamlined, I suppose, or just - - -

*** ALAN WAYNE BURTON

XN MR RAUF

PN883

THE DEPUTY PRESIDENT: Well, it could have been more streamlined if the agreements weren't copied multiple times.

PN884

MR RAUF: I accept that.

PN885

THE DEPUTY PRESIDENT: But they're key documents, aren't they?

PN886

MR RAUF: We can certainly obtain them and provide that.

PN887

THE DEPUTY PRESIDENT: Well, Mr Curmi is said to be person 1, and there's some substance to the figures.

PN888

MR RAUF: Yes.

PN889

THE DEPUTY PRESIDENT: Who's persons 2, 3 and 4?

PN890

MR RAUF: Perhaps I can ask you, Mr - - -?---Person 2 is Mr Russel Lowe. Person 3 is Mr Anthony Dunn who's not in these proceedings today, and person 4 is Mr Martin Micallef.

PN891

I see.

PN892

THE DEPUTY PRESIDENT: Sorry.

PN893

MR RAUF: So person 2 is Mr Russel Lowe.

PN894

THE DEPUTY PRESIDENT: Loke?

PN895

MR RAUF: Lowe, L-o-w-e. So the - - -

PN896

THE DEPUTY PRESIDENT: Mr Lowe, yes.

PN897

MR RAUF: Yes. And person 3 is a Mr Doanne who's not in these proceedings - who's not a witness in these proceedings, but in the fabrication department, and person 4 is Mr Micallef who was a witness in the union case.

*** ALAN WAYNE BURTON

XN MR RAUF

PN898

THE DEPUTY PRESIDENT: Yes. And so I'm to take it the blue boxes are the ones that mostly say 11.86. I don't have it in colour.

PN899

MR RAUF: Yes. Sorry. Yes. They're - - -

PN900

THE DEPUTY PRESIDENT: No. I probably should have used a better printer, but I'm just - - -

PN901

MR RAUF: We can - I'm happy to hand up a colour, if that helps.

PN902

THE DEPUTY PRESIDENT: That'd be great.

PN903

MR RAUF: Apologise, Deputy President.

PN904

THE DEPUTY PRESIDENT: That's all right. I mean, we do have a colour printer. We just didn't see that.

PN905

MR RAUF: It was a lot to print.

PN906

THE DEPUTY PRESIDENT: Thank you very much.

PN907

MR RAUF: So just to explain that, Deputy President, the blue box is towards the bottom.

PN908

THE DEPUTY PRESIDENT: Sorry.

PN909

MR RAUF: Just - sorry. I was just going to explain as I understood the diagram. So the blue box is towards the bottom. It says roughly 11.86.

PN910

THE DEPUTY PRESIDENT: Yes, yes.

PN911

MR RAUF: And that's the July 1993, and then if you travel to the top where the green box is, that's the May 1994.

PN912

THE DEPUTY PRESIDENT: Thank you.

*** ALAN WAYNE BURTON

XN MR RAUF

PN913

MR RAUF: That was the evidence-in-chief.

PN914

THE DEPUTY PRESIDENT: Thank you. Mr Burton, you'll now be asked some questions by Ms Doumit.

CROSS-EXAMINATION BY MS DOUMIT

[2.07 PM]

PN915

MS DOUMIT: Deputy President, I'll just confirm with Mr Burton that he has a copy of the court book in its entirety because I think - yes. If he could be provided with a copy of that court book.

PN916

MR RAUF: Perhaps, Deputy President, I'm wondering if we can retrieve the folders that were given.

PN917

MS DOUMIT: It's okay. Those folders can remain. It's only that I want to take him to an enterprise agreement which is a different version to the one in his affidavit - his witness statement, rather, and so I only need one tab, the first tab of the court book, if that's all right. Mr Burton, have you given evidence in Commission proceedings before or court proceedings?---I have, but in a different context, not Fair Work.

PN918

Okay. Yes. So just to give you a bit of housekeeping, the microphone is not actually amplifying your voice. It's just recording. So if you could speak loudly and clearly and please don't make gestures in response to questions like nodding, for example. Please answer with words. And if I say anything that you don't hear or don't understand, feel free to ask me to repeat it or ask it differently?---Will do.

PN919

Thank you. So you're currently the acting central region manufacturing manager for Vinindex's Smithfield site. That's correct?---Yes.

PN920

And you've held that position since 1 February 2023, correct?---Yes.

PN921

And prior to that, you were national manufacturing excellence manager?---Yes.

PN922

And that was from 1 September 2022?---Yes.

PN923

And prior to that, you did not work for Vinindex; is that correct?---Yes.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN924

Thank you. So you've worked at Vinidex for a little less than one year, correct?---Yes.

PN925

Okay. Can I take you to page 72 of the court book? So you see that that is an extract from the current enterprise agreement at Vinidex's Smithfield site?---Correct.

PN926

And you see at A4.5.6 that these are the grades that relate to the fabrication department?---Correct.

PN927

And you would accept that different grades relate to different levels of experience and competencies?---Correct.

PN928

So you would accept that the more experienced you are, the more skills you have, the more you progress through those grades?---Not always the case. I guess it depends on how you deliver results in the job.

PN929

Yes. So linked to your performance you would progress through the grades in that department?---And the need for skills at those different levels.

PN930

So the skills you're using at those different grades?---If the company requires. For example, you wouldn't have five grade 6s.

PN931

Thank you. Can I take you to page 68 of the court book. You see there this is the appendix that relates to the rates of pay that employees in extruded products receive?--Correct.

PN932

And where it says 'rate' you understand that to refer to the hourly rate that employees receive for each hour they work in extruded products?---Yes, that is correct.

PN933

Yes, thank you. Except that they get that rate for 38 hours per week and they accrue two hours per week towards an RDO?---No, that is not correct. Those are the shift workers, 12 hour shift worker rates.

PN934

All right?---So they are noted rates to account for public holidays and weekends.

PN935

Okay. So then the first statement stands, which is essentially that they get that hourly rate for every hour that they work?---Yes, for under 12 hour shift roster.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN936

Fine. Yes. Thank you. And can I take you to page 69 of the court book? So that's moulded products, day shift. And again, do you accept that that rate is the hourly rate for those employees?---It is.

PN937

And they receive that hourly rate for every hour that they work?---No, they have an RDO system in day shift, in moulding.

PN938

So they receive that hourly rate for 38 hours a week. They work 40 and two of those hours accrue towards an RDO?---That's correct.

PN939

Yes. Thank you. And just lastly, on page 71 of the court book, the tool makers and fitters and electricians which appear on that page, that rate refers to their hourly rate but they do accrue an RDO, so they get that hourly rate for 38 hours per week and two hours accrues towards the RDO?---That's correct.

PN940

Thank you. Can I now ask you to turn to page 199 of the court book? And do you accept that this is a document prepared by Mr Leggit?---Correct.

PN941

And it was provided to Mr Lowe and Mr Mifsud?---Correct.

PN942

And this document attempts to remove the overtime loading from the fabrication rates in the EA to work out base rates?---Correct. I believe Mr Leggit was trying to demonstrate what the base rate component is of a loaded rate.

PN943

So he's trying to demonstrate what the base rate would be if they're loaded – if their rate wasn't loaded?---Correct. I believe that's what he was attempting, yes.

PN944

Yes. And do you see some notes that are in bold on that page?---I do.

PN945

Yes, the first one says, 'All over time is paid on fully loaded rates, normally on base rate'. Do you see that?---I do.

PN946

So that means that every other department gets overtime if they work, in addition to their ordinary hours on their base rate?---Correct.

PN947

Which is their rate in the enterprise agreement that I just took you to. But these employees also get it on the rate in their enterprise agreement?---The Fabricators -
- -

PN948

The Fabrication employees?---They do get, yes.

PN949

Yes. Thank you. And the Fabrication Department also get overtime rates on the rate in their enterprise agreement if they work in excess of their standard working hours?---They do. Yes.

PN950

Thank you. Can I now take you to page 200 of the court book. So that's an email that you sent to managers at Vinidex on 23 January 2023?---Correct.

PN951

And that was after you'd met with Mr Lowe and a couple of managers?---Correct.

PN952

During that meeting, Mr Lowe said that historically, the company wrapped up a range of entitlements into our hourly rate and said that they would pay employees for 88 hours. That was Mr Lowe's statement in that meeting?---Well, I think as it says there, wrapped up into a pay rate to be applied across 88 hours.

PN953

Yes?---Yes.

PN954

Thank you. And at the bottom of that email over the page there are three dot points. Do you see those?---Yes, I do.

PN955

And those are your thoughts? Your words, I should say?---No, that was really what was discussed in the meeting with Mr Lowe and also a mixture of our confusion as managers as to what might be the implication so a bit of both.

PN956

Okay. So this is partly what was discussed in the meeting, but also the views of the managers after that meeting?---Yes.

PN957

So the first one says, 'The implication of this', and this is the way in which Mr Lowe presented that he should be paid (indistinct)?---Correct.

PN958

So the implication of this is that VX, which is Vinidex - - -

PN959

MR RAUF: Sorry, Your Honour, I object. I think Mr Burton was taken to an earlier part of that email and then in couching the last question, it was put that the dot points were in response. But if one looks at the email, it appears to be more in reference to the Fab team are proposing a solution as follows. And it seems to be responsive to the solution, not the earlier contention relating to Mr Lowe.

PN960

THE DEPUTY PRESIDENT: Well, if that's the witness's position, I'm sure he'll say that.

PN961

MR RAUF: Yes, if it please.

PN962

MS DOUMIT: (To witness) So the first dot point says, 'The implication of this is that Vinidex would pay the same but for less hours – less work hours. Monday PM work after 2.30 will be at overtime rates'---That's what it says, yes.

PN963

Yes, so you understood that obviously this proposal put forward by the Fabrication team would cost Vinidex more money?---Correct. They wanted the same take home pay but for less hours of work. And they wanted overtime if they did work on a Monday after 2.30.

PN964

Yes?---So yes, it would cost Vinidex more.

PN965

And then the second dot point. 'It is unknown what the response will be by previous employees'. If accepting the Fab team proposal results in a view perception that Vinidex is admitting three decades of underpayment?---Correct.

PN966

So it was a concern of the managers that you would receive an underpayment claim if the Fabricators are proposal was expected?---Well, I – as it says, we were – it was unclear to us what the response could be because Mr Lowe was contending that for 30 years, they had been underpaid. So if that in fact was true, previous employees might have something to say about that. That's' what that point was referencing.

PN967

Yes, and that was a concern of the managers?---Undoubtedly.

PN968

Yes?---Yes.

PN969

And then the third dot point. 'It is unclear as to what precedent other implications would be caused by agreeing to their solution'?---Correct.

PN970

And again, that was a concern for the managers?---It is a concern, yes, because relative to other jobs on the site, there would be a big disparity.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN971

Okay. We'll get to that in a minute. Thank you. Can I now ask you to turn to page 206 which you'd already been taken to earlier.

PN972

THE DEPUTY PRESIDENT: I'm missing those pages. Thank you. 206?

PN973

MS DOUMIT: Yes. 206. So that is a chart that you have prepared in relation to prior to 1993 and post 1993. And the wages that Fabrication Department employees received?---Correct.

PN974

And over the page on page 207 that is a – I guess a graphic illustration of the calculations that you have made?---That's correct, and file records.

PN975

Sorry, what do you mean, by 'And file records'?---Well, the – some of those dot points are from file records and the orange triangles are the blended rate calculation that I made.

PN976

Yes, okay. Thank you?---Comparing the two to each other.

PN977

Yes. So Person 1 was receiving \$11.86 prior to 1993?---Well, in 1993 in July as according to the record I found in his file.

PN978

Yes, and then the second record that you found is the one that Mr Rauf took you to which relates to 1994 – May 1994?---That's correct.

PN979

So in May 1994, this employer was receiving \$15.13?---Correct.

PN980

And that's a 28 per cent increase on that base rate?---Correct.

PN981

And then Person 2 was also receiving \$11.86?---Mm-hm.

PN982

And then received 36 per cent?---Correct. The file record for that person, the same document as for the first one showed a different hourly rate. A higher hourly rate.

PN983

Yes, but it doesn't explain the basis for that 36 per cent increase?---No.

PN984

And it doesn't explain the basis for the 28 per cent increase?---No.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN985

And similarly, for Person 3, an increase from \$11.86 to \$16.39 but that is a 36 per cent increase which doesn't accord with your calculations which were the 28 per cent?---No, it doesn't accord with the blended rate estimate. It's higher than that.

PN986

Yes?---Correct.

PN987

So it's 36 per cent?---Mm-hm.

PN988

And there's no record which demonstrates why it's 36 per cent?---No. I could find the evidence as to why the pay rate was that much higher.

PN989

Yes, thank you. And then Person 4, it's actually 48 per cent?---Correct.

PN990

And there is no record as to why?---Yes.

PN991

In 1993, Person 4's increase was from \$10.58 to \$16.14?---I would say – no record that I could find.

PN992

Thank you?---Yes.

PN993

No record that you could find as to why these rates increased in the way that they did?---Correct.

PN994

Okay. Can I now, take you to the document that Mr Rauf showed you this morning. The second – not the first payslip, the second table?---Yes.

PN995

So do you see how that document, there is a line that says salary, and I'm just looking at the first section of that Table, so the first salary?---Top left corner?

PN996

Top left corner?---Okay.

PN997

And it says, '1150.39'?---Correct.

PN998

And is that your handwritten annotation which says, 'Over 76 hours, \$15.13'?---Correct.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN999

Yes. So what you've done is you've divided \$1150.39 by 76?---Correct.

PN1000

And it came to \$15.13?---Correct.

PN1001

Which is not exactly what you – what – the figures that we just looked at in page 207?---No, it's not precisely. If you look at page 208 you will see the estimate.

PN1002

Yes. Yes?---So - - -

PN1003

Yes, not precisely your estimate, which was \$15.15?---Correct.

PN1004

And then underneath that salary line, there's another line which says, 'Eight hours overtime at time and a half'?---Yes.

PN1005

And if I were to divide that rate, \$163.57 by eight, I would get \$15 – I get roughly \$20 which you would accept is that hourly rate, \$15.13 at time and a half?---I'm sorry, please say that again?

PN1006

Yes. I will. So that 163.57, is essentially made up of eight lots of \$15 at time and a half. So that \$15 is approximately \$20 at time and a half. I'll just - I'll break it down further, sorry?---That's all right.

PN1007

THE DEPUTY PRESIDENT: I think we need to be specific, don't we?

PN1008

MS DOUMIT: Yes. I will be. Is it okay if I just get my calculator?

PN1009

THE DEPUTY PRESIDENT: Look, fine if you need a five minute break or 10?

PN1010

MS DOUMIT: I don't need a break. I can do that on the go, if that's okay.

PN1011

THE DEPUTY PRESIDENT: That's fine. Take your time.

PN1012

MS DOUMIT: Yes. Thank you. Yes, so Mr Burton, I've just done \$163.57 divided by eight. And I've gotten \$20.44?---Mm-hm. Yes.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN1013

So what I'm putting to you is that is simply the hourly rate which is \$15.13 at time and a half to get to \$20.44?---The calculation I did and perhaps it's incorrect, but you can check if you'd like is eight hours overtime at time and a half means effectively 12 hours. And 12 into 163 gives 13-odd. That's what that number means for me.

PN1014

Yes. Okay. And all I'm trying to establish is that that rate – the 163.57 is eight hours at time and a half. That's how it's calculated? It's eight hours on the base rate, \$15.13 at time and a half?---I don't think that's correct because if it was time and a half it would be \$15.13 times 1.5 which would be higher than 20.

PN1015

Okay.

PN1016

THE DEPUTY PRESIDENT: It would be about 23.

PN1017

MS DOUMIT: All right. That's fine. I accept that. So those eight hours – so it's clear from this table. This first table that Mr Curmi in this week, related to – in this fortnight, sorry – related to that first table, worked eight hours of overtime?---I don't know. I cannot tell you how this table you know was – what the purpose was, because it's a file note from 30 years ago.

PN1018

Okay?---All I can do is pick up a salary number and work out an hourly rate from that. And that hourly rate corresponded very close to my estimate.

PN1019

Yes?---Yes.

PN1020

That's fine. So what I'm asking is where it says, 'Eight hours overtime' at time and a half, you interpret – you would interpret that to mean in that week, Mr Curmi worked eight hours of overtime?---No, it's impossible to interpret that from that document because it just says pay week ending 15.05.94.

PN1021

Okay?---So without speaking to the person who 30 years ago did it, I can't infer that.

PN1022

Okay?---Yes.

PN1023

But you are comfortable inferring that the salary relates to 38 at 76 hours?---I am, because my estimate in – on page 209 came to within a dollar of that number.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN1024

Yes, but there is nothing in that line salary which says how many hours they worked in order to accumulate that amount?---There is not, no.

PN1025

So you have inferred that they have worked 76 hours to arrive at that figure?---No, I've inferred that that's the fortnightly pay.

PN1026

Okay?---Correct.

PN1027

And then in order to work out the hourly rate, which you say is \$15.13, you've divided that by 76?---Correct.

PN1028

Because you say that that rate corresponds to 76 hours of work?---Correct. That was my inference from that number, yes.

PN1029

Yes. Thank you. But you're not willing to conclude that eight hours overtime at time and a half – or, sorry, to be very fair and to be exact. Eight hours O/T at 1.5 means that that person, Mr Curmi, worked eight hours overtime that fortnight?---I – I don't know.

PN1030

Okay. And you don't know because you don't have any – you can't speak to the person who prepared this document?---Correct.

PN1031

And you don't have any supporting documents that relate to this document?---Correct.

PN1032

Thank you. And there – just one final question on this document. There is no timesheet corresponding to these figures in this document that you have seen?---No.

PN1033

Thank you. Now, can I ask you to turn to page 1264 of the court book?---I don't have that page.

PN1034

THE DEPUTY PRESIDENT: So where was that page?

PN1035

MS DOUMIT: 1264.

PN1036

THE DEPUTY PRESIDENT: 1264.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN1037

MS DOUMIT: So that is an F17. Now, an F17 is a declaration that an employer puts in when they apply for an enterprise agreement to be approved. You're aware of that or not?---I am.

PN1038

Yes. And this is an annexure to your witness statement. That's F17?---Correct.

PN1039

And it's sworn by Justin Dowling who is the National Distribution Manager at Vinidex?---Correct.

PN1040

Yes. Thank you. Can I ask you to turn to page 1279. Now, this is an attachment to that F17. Do you accept that?---I do.

PN1041

And it responds to Question 10 on the F17 which says does the agreement contain any terms or conditions of employment that are more beneficial than equivalent terms and conditions in the modern awards listed in your answer to Question 8. Do you see that at the top?---Correct.

PN1042

Thank you. And then the second – the second column – sorry, the second row down says, 'Wages' and then ion brackets, it says, 'Per hour rates, no penalties added'. Do you see that?---I do.

PN1043

Thank you. And so per hour rates, you would interpret that to mean the amount that these employees in the table should receive per hour of work that they complete?---I don't know the answer to that.

PN1044

Okay. That's fine. And then in the first row, you've got C14, so I'll just explain. C14 and if you disagree you can tell me, but that relates to the award classification. So C14 is the award rate that relates to these grades?---I believe so.

PN1045

Yes, and then EA in the next column over. That's the agreement rates?---Correct.

PN1046

So you have C14, which is engineering and manufacturing employee and then you have all of these grades in the Vinidex which correspond to a C14?---Correct.

PN1047

And you can see Fabrication is there?---I can.

PN1048

And the hourly rate is listed as \$34.59?---Correct.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN1049

And you would accept that that is the same hourly rate for a Grade 1 in the enterprise agreement? I can take you to it?---I'll take your word for it.

PN1050

I'm happy to - - -?---I'm presuming it's the same in the table. I can't remember off hand.

PN1051

Yes, just a moment. So if I can take you to page 72 of the court book again. Apologies. Yes, sorry, 72, that's right?---That's correct.

PN1052

Yes? And then for the second one, C13, at – you've got Fabrication again, Grade 2, 37.75?---That's correct.

PN1053

And C12 further down, again, you have Fabrication and it corresponds to the EA rate?---Correct.

PN1054

And I won't take you to the rest, but the rest you correspond. So thank you for your answers there. Now, can I ask you to turn to page 1328 of the court book. So this is a document that you've prepared to compare the wages of Fabrication Department employees and other employees at Vinidex?---Other day shift workers, yes.

PN1055

Other – yes. Sorry. Other day shift workers. Thank you. And the purpose of this in your evidence is to demonstrate that Fabrication Department employees under the proposal that we put forward as to how they should be paid under the agreement, so the purpose of this is to show that they would get substantially more than everyone else or than most people, if our proposal was accepted?---No, not correct. It was to show relative to qualified trades where they would be positioned.

PN1056

Thank you. Yes. Now, you prepared two versions of this document, one where overtime rates are paid on the rate in the enterprise agreement for the Monday work. That's the first one?---Sorry, can you clarify that?

PN1057

Yes. So if I can get you to go back one page to 1326? In that table, you worked out what - you based your calculations on the fact that Fabrication Department employees would get overtime rates for the Monday work?---I based the calculation on their ordinary hourly rate in the agreement.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN1058

Yes. But when you say – oh, okay, all right. That's fine. Sorry. Thank you. So then if I can take you back to 1328?---Mm-hm.

PN1059

The way that this table has been generated is essentially, if our case is accepted?---Mm-hm.

PN1060

These are what – where it says AW Ordinary Pay Per Fortnight. That column?---Yes.

PN1061

Which is in red? That is what the Fabricators would be paid?---Correct. So instead of getting what's shown in the column ordinary pay per fortnight, they would get the amount in that column you've just identified. Yes.

PN1062

Yes. Thank you. So the column titled ordinary hourly rate at 1 March 23, you see that?---I do.

PN1063

That's just their hourly rate. Every employee's hourly rate in the enterprise agreement?---That's correct.

PN1064

Yes?---Day shift workers.

PN1065

Yes. Day shift workers. Sorry. And then the column titled standard worked hours per fortnight, do you see that?---I do.

PN1066

That is the number of standard hours that every employee works. Every day shift employee works at Vinindex?---That's correct.

PN1067

And it's clear from that, that only the Fabrication Department employees worked 88 hours?---That's correct.

PN1068

And everybody else works 80 hours?---Correct.

PN1069

And you agree that they get paid for 38 hours per week and two hours accumulates towards an RDO?---The non-fabricated - - -

PN1070

The non-fabricated?---Correct.

PN1071

Yes. And the fabrication department employees don't get an RDO?---They do not get an RDO.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN1072

Yes. Thank you. So if one of those employees that works 80 hours per fortnight were to work 88 hours per fortnight, they would get overtime rates on that additional eight hours?---That's correct.

PN1073

And that would be based off the ordinary hourly rate in that first column? That first numbered numerical column?

PN1074

---That's correct.

PN1075

The third column there? And so in the column titled AWU Ordinary Pay Per Fortnight, which is the fourth from the right?---Yes.

PN1076

You've worked out what employees in the Fabrication Department would earn for working 88 hours on our case?---With your proposal as I understood it, yes. That's how I calculated that.

PN1077

So essentially, that is that they would get paid for 84 hours at the rate in the agreement and they would get an RDO component on top of that. So time and a half for the first hour and double time for their RDO?---That's correct.

PN1078

Thank you. But what you haven't done in this table is worked out what everyone other than the Fabrication Department would receive if they worked the same roster?---No, I haven't done that.

PN1079

No, you haven't done it. So what you've actually compared their rates to in this table, is what they would earn under our proposal for working 88 hours or 87 hours and 40 minutes, per week - per fortnight compared to what everyone else is receiving for only working 80 hours per fortnight?---That's correct. So if nothing changed, that's – and your proposal was applied, that would be the result.

PN1080

That's right?---That's correct.

PN1081

And if you did work out what each of these employees would receive for working 88 hours, they would be receiving eight hours of overtime?---That's correct.

PN1082

So they would get paid time and a half for the first three hours and double time for the last hour of overtime?---That's correct.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN1083

And obviously in that case, the AW ordinary rate of pay column if it was worked out that they were working the same hours as the Fabrication Department would change quite substantially insofar as everybody in that column, in that column, other than the Fabrication Department employees would increase?---They would. Correct. Yes.

PN1084

All right. That's the cross-examination.

PN1085

THE DEPUTY PRESIDENT: And just looking at that, you attribute the percentage increase above the current on each limb of Fabricators as 20 per cent?---That's correct, Deputy President.

PN1086

Well, then if the hypothetical situation that was just put to you was to put an end to this table, then every other grouping of employees would go up 20 per cent if they were working the same?---I think it would be the same percentage, potentially.

PN1087

Yes?--- Yes.

PN1088

MS DOUMIT: Just arising from that, Deputy President?

PN1089

THE DEPUTY PRESIDENT: Yes, sorry.

PN1090

MS DOUMIT: (To witness) I actually put to you, Mr Burton, that it would raise – it would increase more than 20 per cent?---Yes, I haven't done the calculation so I don't know.

PN1091

But the reason why I say it would and if you can follow this, Mr Burton. They would receive – they wouldn't receive their base hourly rate as the Fabricators do for those additional eight hours. They would receive the base hourly rate times 150 per cent for the first three hours and then double time for the last - - - ?---Correct.

PN1092

Yes. Thank you?---Yes, so that makes sense. It would be more than 20 per cent?

PN1093

THE DEPUTY PRESIDENT: I was understanding it was being applied to the AW Ordinary Pay per fortnight? Okay. Thanks. Sorry about that – I withdraw that.

*** ALAN WAYNE BURTON

XXN MS DOUMIT

PN1094

MS DOUMIT: Yes. Thank you, Deputy President.

PN1095

THE DEPUTY PRESIDENT: Any re-examination?

RE-EXAMINATION BY MR RAUF

[2.43 PM]

PN1096

MR RAUF: There is very briefly. But I'm wondering, Deputy President, if I might just - - -

PN1097

THE DEPUTY PRESIDENT: Sorry, could you speak up?

PN1098

MR RAUF: Sorry. Yes. There is a brief, very briefly. But I'm wondering before we do that. I just need to briefly step out if I might have a moment?

PN1099

THE DEPUTY PRESIDENT: Yes. Not a problem. Do you need us to adjourn?

PN1100

MR RAUF: Sorry?

PN1101

THE DEPUTY PRESIDENT: For how long?

PN1102

MR RAUF: Like two minutes?

PN1103

THE DEPUTY PRESIDENT: Okay. We'll adjourn for two minutes.

PN1104

MR RAUF: Thank you.

<THE WITNESS WITHDREW

[2.43 PM]

SHORT ADJOURNMENT

[2.43 AM]

RESUMED

[2.47 PM]

PN1105

MR RAUF: I'm grateful for the opportunity, Deputy President. It's all the water and coffee taking effect.

*** ALAN WAYNE BURTON

RXN MR RAUF

*** ALAN WAYNE BURTON

RXN MR RAUF

<ALAN WAYNE BURTON, AFFIRMED

[2.47 PM]

RE-EXAMINATION BY MR RAUF, CONTINUING

[2.47 PM]

PN1106

MR RAUF: Mr Burton, you were taken to court book page 199. If I can just take you back to that page? This was a table prepared by Mr Leggett and you were taken to the words in bold, 'All overtime is paid on the fully loaded rates normally on base rates.'?---M'mm.

PN1107

What overtime, to your understanding, was that referring to?---Any overtime in addition to standard work hours.

PN1108

Now, you were also taken again to the slides that you prepared, do you remember that?---I do.

PN1109

And questions were put to you – I'll just turn up those slides. So if you go to, if you still have access to them?---I do.

PN1110

And you were asked about the rates in the third page of that slide set and why there were differences, for instance, in relation to person two and three?---Yes.

PN1111

Do you remember those questions?---I do.

PN1112

And I think you have explained earlier that person two was Mr Lowe, Russell Lowe that is?---Correct.

PN1113

Now, if I can perhaps just ask you to look at, in attempting to understand the explanation you gave to that, but if I can ask you to look at paragraph 10 of Mr Lowe's statement, which is court book page 91. If you have access to that?---Okay.

PN1114

Paragraph 10, amongst other things says that throughout the duration of my employment with Vinidex my pay slips detailed that I worked 76 hours a fortnight. But then, relevantly, in the parentheses it talks about the total pay but this includes my first aid allowance. Just coming back to the slides - - -

PN1115

MS DOUMIT: Deputy President, I have to object to this. The way in which this is being asked.

PN1116

THE DEPUTY PRESIDENT: Should it happen in the presence of the witness or in the absence?

*** ALAN WAYNE BURTON

RXN MR RAUF

PN1117

MS DOUMIT: In the absence preferably.

PN1118

THE DEPUTY PRESIDENT: Yes. Now, Mr Burton, all this is is sometimes an objection arises and if was to be argued while you're sitting in the witness box it might suggest to you an answer?---M'mm.

PN1119

And so for absolute caution we ask you to leave and go outside just so that it can't be said that any suggestion was made as to what the answer might be?---Understood, Deputy President. Do I leave now?

PN1120

Yes if you – please?---Yes.

PN1121

Just wait outside and we'll come and get you when it's the appropriate time, thank you.

<THE WITNESS WITHDREW

[2.51 PM]

PN1122

MS DOUMIT: So, Deputy President, the basis of my objection is that he's essentially led the witness to a statement which says that Russell Lowe's pay includes his first aid allowance. And now he's taking him back to a document where I had expressly asked him whether he knew why increases might have occurred in a particular way or might have been over and above a 28 per cent, which he answered, 'No. He didn't know.' And now I presume my friend is going to ask him if he thinks the first aid allowance might have been a factor of that which is clearly a leading question in so far as he's led him to the answer before he's even asked it. I don't know if that was my friend's intention but to the extent that it was - - -

PN1123

THE DEPUTY PRESIDENT: Well, I think you might have got in very early but it may not be the course that the - - -

PN1124

MS DOUMIT: Yes. Yes, I did want to get in early just in case - - -

PN1125

THE DEPUTY PRESIDENT: - - -route was going to take.

PN1126

MS DOUMIT: - - -but I am happy to be - - -

*** ALAN WAYNE BURTON

RXN MR RAUF

PN1127

MR RAUF: Just to explain, Deputy President. So there was some discussion around that. The witness was asked whether he could explain on a review of the documents in the box the difference in the rates. And with the information that's

otherwise before the Commission, I want to ask him whether that's something that does impart/explain why there might be that discrepancy. And either he will know or he won't.

PN1128

THE DEPUTY PRESIDENT: Well, that arises from cross-examination, doesn't it?

PN1129

MR RAUF: It does, in my submission.

PN1130

THE DEPUTY PRESIDENT: But what Ms Doumit is expressing is a concern as to how the question will be phrased so that it not be leading. Am I correct in that?

PN1131

MS DOUMIT: Yes. My concern is also that he's already said in cross-examination that he doesn't actually know what the component is for that. I don't see any utility in asking him - - -

PN1132

THE DEPUTY PRESIDENT: Well, one can ask questions.

PN1133

MS DOUMIT: Yes.

PN1134

THE DEPUTY PRESIDENT: I mean one can ask questions to test that answer.

PN1135

MS DOUMIT: Yes.

PN1136

THE DEPUTY PRESIDENT: That's the whole reason we have re-examination.

PN1137

MS DOUMIT: Yes.

PN1138

THE DEPUTY PRESIDENT: But I understand your point that you don't want any leading. And Mr Rauf is an experienced operator but if he does lead - - -

PN1139

MR RAUF: Then that will be struck down from various sources. So I will try and be mindful.

PN1140

THE DEPUTY PRESIDENT: If we can get the witness back please? Thank you, Mr Burton.

<ALAN WAYNE BURTON, RECALLED

[2.54 PM]

PN1141

MR RAUF: Thank you, Mr Burton. I took you earlier to evidence of the statement of Mr Lowe as to what he says occurred for the duration of his employment?---M'mm.

PN1142

And you were asked, generally, about the level of increases that you reflected from the data on the third page of the slide?---Correct.

PN1143

What I want to understand is whether that, having regard to what you have read or of a witness saying that you have got allowances et cetera – whether that's something that might affect the overall increase?---Undoubtedly. I was not able to obtain details of allowances back in 1993, and therefore I was not able to I think land two numbers, to be precise, to the nearest decimal point. But they were very close.

PN1144

You were taken to the table at page 1326. That's Annexure WB34 and - - - ?---Sorry, 1326?

PN1145

1326, yes?---Correct.

PN1146

And I recall that in your answer you explained that this was the position as reflected under the current enterprise agreement in terms of the rates and for the standard hours?---Correct.

PN1147

For your understanding does the agreement use the concept of standard hours or what are standard hours?---The hours that are worked by the employees. Standard work hours.

PN1148

Yes. And going to the following table that you were also taken to at 1328, annexure WB35. Do you see that?---I do.

PN1149

And there you were asked questions about the further calculations on applying the increases sought by the union and what impact that has in terms of the calculations. Yes?---Correct.

PN1150

Now, it was also put to you that, that's if other employees were paid at their overtime rates and I think that was said with reference with 1.5 and then the first three hours and double time as well somewhere there but that would have an impact on their pay?---It would, yes. Correct.

PN1151

All right. Now, just to clarify in respect of that general question that was asked of you. Can I ask you to have a look at page – court book page 180, which is the current agreement? And you were taken to some of these as well?---Okay.

PN1152

So if I look at, for instance, 180 and in particular clause A3.2.3 overtime. There seems to be expressed a flat rate of overtime, whereas I think what was put was that overtime generally for other employees of 1.5 in double time but can I ask you to explain. So how does that flat rate operate?---My understanding is there are various ways in which overtime rates are described in the agreement or included. So, in this particular case, they have a flat rate, i.e. it's not related to their ordinary pay rate.

PN1153

Right?---Whereas, in other departments the ordinary pay rate is used as the overtime rate.

PN1154

And in respect of the overtime worked by these other departments, is there any set number of hours that they work? Or is there any expectation about the number of overtime hours they might work each fortnight?---No. These are 12-hour shift roster – seven-day 12-hour shift roster people – so they work overtime from time to time which would be in portions of a whole shift at a time.

PN1155

No further questions. Thank you, Deputy President.

PN1156

MS DOUMIT: Deputy President, just before he is released. There are two matters arising.

PN1157

THE DEPUTY PRESIDENT: Yes.

PN1158

MS DOUMIT: Is that all right?

PN1159

THE DEPUTY PRESIDENT: Yes.

PN1160

MS DOUMIT: Thank you.

FURTHER CROSS-EXAMINATION BY MS DOUMIT

[2.59 PM]

PN1161

MS DOUMIT: Just, firstly, Mr Burton you were taken to paragraph 10 of Mr Lowe's witness statement, which is on page 91 of the court book?---Yes.

*** ALAN WAYNE BURTON

FXXN MS DOUMIT

PN1162

And what it says there, the statement you were taken to is, 'Therefore my pay slips reflect that I am paid a total of \$4,082.74' and in brackets it says, 'includes my first aid allowance'. So if you turn over the page to page 94, that is the pay slip – that's the current pay slip of Mr Lowe, which that paragraph was referring to?---M'mm.

PN1163

See that?---I do.

PN1164

And do you see in there where it says 'Allowances/deduction' on the right-hand side?---Correct.

PN1165

Do you see that the first one says 'first aid allowance' and then the value of \$30.42 ascribed to it?---Correct.

PN1166

So the first aid allowance doesn't actually form part of Mr Lowe's hourly rate. Do you accept that? Based on this pay slip?---Of his hourly rate?

PN1167

Yes. So it's in addition to his hourly rate?---I think you might mean his hourly – his total pay - - -

PN1168

Or in addition to his - - -?---- - - ordinary pay?

PN1169

- - - total ordinary pay. Yes?---No. Well, the total ordinary pay is what he's paid. And then, yes, and then he gets additional allowances, that's correct.

PN1170

Yes, thank you. So it's not the case that the first aid allowance, for example, would have constituted part of that increase that you calculated? Because it's not part of the rate?---Which increase that I have calculated?

PN1171

So the 28 per cent increase that you looked at. The difference between the 1993 rate and the post-standard work hours arrangement rate could not have included the first aid allowance. Because, as I have just shown you on the pay slip it doesn't actually form part of the rate itself. It's an addition?---Well that - - -

PN1172

MR RAUF: Sorry, I was going to object to the question. I might do so in the absence of the witness, Deputy President.

PN1173

THE DEPUTY PRESIDENT: Yes. If you need to. Sorry, once again, Mr Burton.

*** ALAN WAYNE BURTON

FXXN MS DOUMIT

PN1174

MR RAUF: Thank you. Deputy President the concern is that the question is misleading in the proposition that's put. Paragraph 10, Mr Lowe does a couple of things. One, he talks about the practise which had applied for the duration of his employment, that is that he was paid a certain allowance, and then he has attached a current pay slip. But having regard to one of the answers that Mr Burton gave earlier that the difficulty he had was that when one travelled back to note the data from 1993 it didn't in the same way that it does now, set out the allowances or the amounts.

PN1175

So to say that well separately set out here and you wouldn't include it doesn't in the same way apply back to 1993 given what Mr Burton has said that all he had was the pay record documents that he was taken to and that simply indicates whole amounts rather than specific allowances which may be reflected in the documents, in the pay records as at that date.

PN1176

THE DEPUTY PRESIDENT: It was a basic proposition that first aid is not included in the hourly rate. I would have thought that's basic.

PN1177

MR RAUF: That's so. And I don't cavil with that aspect of it but the difficulty is that I think the further contention that's put forward is that having regard to then the calculations, going back to 1993 and '94, similarly the allowances would have been excluded or separated when there wasn't that same distinction or separation based on the records then. I might have misunderstood, but I just didn't want there to be this conflation of things.

PN1178

THE DEPUTY PRESIDENT: Do you want to be heard, Ms Doumit?

PN1179

MS DOUMIT: Sorry?

PN1180

THE DEPUTY PRESIDENT: Is there anything you wish to - - -

PN1181

MS DOUMIT: I don't. I think I have taken that in a way as far as I wanted to. So I don't think there's - - -

PN1182

THE DEPUTY PRESIDENT: In the absence of the witness the basis of the figures at page 207 are they disputed?

*** ALAN WAYNE BURTON

FXXN MS DOUMIT

PN1183

MS DOUMIT: So all we've seen as the basis of those figures is these two additional documents which are - - -

PN1184

THE DEPUTY PRESIDENT: Yes. But I mean is it disputed? For example, that Mr Curmi had a 28 per cent pay increase between July of '93 and May '94?

PN1185

MS DOUMIT: We know that he had a pay increase but we don't actually have the records of what that pay increase was.

PN1186

THE DEPUTY PRESIDENT: So you dispute it?:

PN1187

MS DOUMIT: I can seek further instructions but I have never – it's never been expressly told to me that that is the increase that – in dollar terms – that these employees experienced. They knew at the time they received an increase.

PN1188

THE DEPUTY PRESIDENT: Yes. Well, until you read the hours the affidavits came in that had a table annexed to it.

PN1189

MS DOUMIT: Yes.

PN1190

THE DEPUTY PRESIDENT: That outlined, in summary form, these increases. That's why I am very interested to know whether there's any dispute.

PN1191

MS DOUMIT: Yes.

PN1192

THE DEPUTY PRESIDENT: Can I proceed on the basis of these, albeit possibly slightly a global, but figures in relation to the increases in relation to Mr Curmi and Mr Lowe, and Mr Mifsud and one other employee who has not given evidence but he's a fabricator.

PN1193

MS DOUMIT: So when I have put those figures to their – my instructors – the answer is they don't remember. I can only say that that is their evidence. It wasn't put to my witnesses that that was the increase actually here.

PN1194

THE DEPUTY PRESIDENT: I just want to be abundantly clear because - - -

PN1195

MS DOUMIT: Yes.

PN1196

THE DEPUTY PRESIDENT: - - -if there's a challenge - - -

PN1197

MS DOUMIT: Yes.

PN1198

THE DEPUTY PRESIDENT: -- -to the accuracy of those figures.

PN1199

MS DOUMIT: Yes.

PN1200

THE DEPUTY PRESIDENT: It should be made apparent.

PN1201

MS DOUMIT: Yes. So that the challenge has been made through cross-examination, in so far as the way in – what they're based on and what they purport to conclude. But not necessarily the calculations explain anything.

PN1202

THE DEPUTY PRESIDENT: Okay. No problems. Will you get the witness back in, thanks? Do you wish to be heard on that Mr Rauf?

PN1203

MR RAUF: No, Deputy President.

PN1204

THE DEPUTY PRESIDENT: No. Thank you.

<ALAN WAYNE BURTON, RECALLED

[3.06 PM]

FURTHER CROSS-EXAMINATION BY MS DOUMIT

[3.06 PM]

PN1205

THE DEPUTY PRESIDENT: Thank you.

PN1206

MS DOUMIT: Thank you. Mr Burton, you were also taken to page 180 of the court book. I'll take you back there for just a moment. And, specifically, you were taken to A3.2.3, overtime?---Yes.

PN1207

Am I correct in understanding that those overtime rates apply to shift workers, rather than day workers?---Correct.

PN1208

Yes. Nothing further.

PN1209

THE DEPUTY PRESIDENT: Thank you. Anything further?

*** ALAN WAYNE BURTON

FXXN MS DOUMIT

PN1210

MR RAUF: Nothing arising. Thank you, Deputy President.

PN1211

THE DEPUTY PRESIDENT: Thank you, Mr Burton?---Thank you.

PN1212

You are finally excused. Thank you for giving evidence?---Thank you, Deputy President.

<THE WITNESS WITHDREW

[3.07 PM]

PN1213

MR RAUF: Thank you, Deputy President. The second witness is Mr James Huemmer who will need to be dialled in.

PN1214

THE DEPUTY PRESIDENT: Yes.

PN1215

MR RAUF: And I understand - - -

PN1216

THE ASSOCIATE: Good afternoon, Mr Huemmer. Can you hear me okay?

PN1217

MR HUEMMER: I can hear you very good.

PN1218

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

PN1219

MR HUEMMER: James Thomas Huemmer. And my personal address is (address supplied).

PN1220

THE ASSOCIATE: Because this is online environment I am going to ask you to repeat the following after me. It's an affirmation because obviously you don't have access to a Bible or any religious text.

<JAMES THOMAS HUEMMER, AFFIRMED

[3.08 PM]

EXAMINATION-IN-CHIEF BY MR RAUF

[3.08 PM]

PN1221

THE DEPUTY PRESIDENT: Thank you, Mr Huemmer. Mr Rauf.

PN1222

MR RAUF: Mr Huemmer, just for the record can I ask you to state your full name again, please?---Sure, James Thomas Huemmer.

*** JAMES THOMAS HUEMMER

XN MR RAUF

PN1223

And your work address?---My work – what?

PN1224

Address?---Address – 26 Church Street, Fortitude Valley, Queensland.

PN1225

Thank you. And Mr Huemmer, you're engaged as a principal consultant at Shiftwork Solutions Pty Limited?---Yes, I am.

PN1226

All right. Now you have prepared a statement for the purposes of these proceedings?---Yes.

PN1227

And that statement contains 42 paragraphs. Do you have a copy of that in front of you?---Yes, I do.

PN1228

And it has a number of annexures as well?---Correct.

PN1229

Yes. Thank you. Do you confirm that that statement is true and correct to the best of your knowledge and belief?---Yes, it is.

PN1230

All right. Thank you. I tender that, Deputy President.

PN1231

THE DEPUTY PRESIDENT: I note the objections have been marked. That will be Exhibit R4.

EXHIBIT #R4 WITNESS STATEMENT OF JAMES THOMAS HUEMMER

PN1232

MR RAUF: Thank you. R4. Think there were the two tables.

PN1233

THE DEPUTY PRESIDENT: R2 and R3.

PN1234

MR RAUF: Yes, right. Thank you. You're ahead of me, Deputy President. Thank you, that completes the examination-in-chief and Mr Huemmer I will hand over to my friend to cross-examine.

PN1235

THE DEPUTY PRESIDENT: Yes, Ms Doumit will be cross-examining you. Can you see the Bar table? Can we move it around?

CROSS-EXAMINATION BY MS DOUMIT

[3.11 PM]

*** JAMES THOMAS HUEMMER

XXN MS DOUMIT

PN1236

MS DOUMIT: Yes, you can see me?

PN1237

THE DEPUTY PRESIDENT: Thank you?---Yes, I can.

PN1238

MS DOUMIT: Thank you. Mr Huemmer, in 2002, Vinidex contacted you because they purchased new equipment for their moulding department. Is that correct?---Yes.

PN1239

Yes. And you did look at the fabrication department roster arrangements as part of a review. But that was not the main work that you were contracted to do?---All areas were involved in the roster review but the moulding area, yes there were bigger changes needed for that area. So a bit more focus, yes on that group and priority I guess.

PN1240

Yes, thank you. And you prepared a business analysis in November 2002?---Correct.

PN1241

And predominantly, the purpose of that analysis was to look at options with the moulding department, specifically looking to move from a five-day roster to a seven-day roster?---That was part of the analysis, yes.

PN1242

And also as part of the business analysis you looked at some common features between each of the departments at Vinidex?---Yes, we tried to evaluate the performance and the existing rosters.

PN1243

Yes, thank you. Do you have a copy of the court book with you?---The which book?

PN1244

The court book. That's my oversight. I should have asked for one to be provided to him.

PN1245

MR RAUF: If we can - - -

PN1246

MS DOUMIT: Do you have a copy - - -

PN1247

MR RAUF: We can email that.

*** JAMES THOMAS HUEMMER

XXN MS DOUMIT

PN1248

THE DEPUTY PRESIDENT: Yes, if you have access to a laptop?--- Yes.

PN1249

It can be emailed to you shortly. It opens up - - -?---Okay.

PN1250

- - - and you can search by pages?---Okay.

PN1251

So that will get sent through.

PN1252

MR RAUF: Yes.

PN1253

THE DEPUTY PRESIDENT: In the next few minutes.

PN1254

MS DOUMIT: Sorry, Mr Huemmer, is it correct that you have a copy of your witness statement?---Yes, I do.

PN1255

And does it have the page numbers that correspond? So at the bottom is the first page numbered 1952?---Yes, it is.

PN1256

Okay. That's perfect. That's all we need. So I will take you to page numbers in that document then?---Okay. Yes.

PN1257

Thank you. So can I ask you to turn to page 2056?---Overtime for employee by department?

PN1258

Yes, that's right. Thank you?---Yes.

PN1259

And it's clear from that document that fabrication employees, based on your assessment worked the least amount of overtime of any department at Vinindex?---This is the ad hoc overtime, yes.

PN1260

Yes, thank you. And you obviously knew that they worked four hours as part of this, in addition to their 38, as part of their standard rate?---Yes, that was the built-in overtime, yes.

PN1261

Thank you. Can I take you to page 2058?---Yes.

*** JAMES THOMAS HUEMMER

XXN MS DOUMIT

PN1262

And that's a pie chart showing the use of casual employees between different departments?---Yes.

PN1263

And fabrication is not listed as one of those departments?---Yes.

PN1264

And that's because fabrication didn't use casual employees at that time?---I was not – yes, not aware of any casual usage in their – in that department, no.

PN1265

Yes, thank you. Can I take you to page 1955 of the court book?---Yes.

PN1266

Paragraph 16. This is of your witness statement?---Yes.

PN1267

And in that paragraph you say that in your – I will just bring the exact words up. Sorry. So subparagraph (a). So this says your business analysis indicated at the time of the review, subparagraph (a) that fabrication department was working 44 rostered hours a week which included rostered overtime?---Yes.

PN1268

And also in respect of the roster the RDO and rostered overtime were included in the salary?---Correct.

PN1269

And can I ask you now to turn to page 2077 of the court book?---Yes.

PN1270

And next to the words 'Current roster' at the top of that page it says, 'RDO and overtime included in salary'?---Yes.

PN1271

Then page 2085 of the court book?---Yes.

PN1272

It says, 'Extra hours included in hourly rate' on that page?---Yes.

*** JAMES THOMAS HUEMMER

XXN MS DOUMIT

PN1273

Now this document was never provided to employees?---Yes, it - well, this information was provided to management, union and employees, yes. So, to present alternative rosters, I needed to show workers, yes, what they're working and then, obviously, in these cases, because the 44 hours was staying the same, the pay was staying the same, so that got - we ended up getting into pay - yes, at first employees want to know what they work and then the next is, yes, what do they get for it. So these would have been - these options would have been presented to management, they would have been presented to the union. It's rare that I can get in front of employees without management and union approval ahead of time, and then, yes, we present that information to employees to help

with their decision making. Well, those were the - the previous stage were the three choices that fabrication had, and this just shows - page 2085 shows their current roster.

PN1274

Yes, but employees weren't given a copy of, for example, this business analysis? This was - - -?---Not the whole business - they would have been given - when we went - so, in the process, we did the business analysis up front. The second part is then we survey employees, so we capture information from employees. These would have been presented to employees in the latter stages when we were looking at final roster design, so those final roster options and their current, that would have been presented to employees at the end, yes.

PN1275

Just to clarify, you would have given a presentation to employees, but this document, as it stands, was not provided to employees; this was only provided to managers?---Yes, the original business analysis, yes, but our original discussion document about, yes, possibilities, opportunities, things that we found, yes.

PN1276

Yes, thank you. Now you provide some evidence that you met with fabricators as part of your review?---Correct.

PN1277

You don't know which fabricators exactly you would have met with during that time; is that correct?---When we survey employees, we give them anonymity, so otherwise they don't fill the questionnaires in necessarily, so we bring back results that come from the entire area. So, they were not - they are anonymous, but we had, yes, 13 - I had 13 people in fabrication at that time and I had 13 responses or questionnaires that were filled in and indicated that they worked in fabrication, but, no, I don't have individual names on those questionnaires.

PN1278

Thank you. After consulting with some fabrication department employees, you prepared a document about the roster review changes?---Yes.

PN1279

Again, that was sent to managers of Vinidex?---I would have first shown it to management, then we would have shown it to you and then we would have shown it to employees, but we would have done that work area by work area, so we would have just talked to fabrication about their options, we would have just talked to moulding about their options.

PN1280

Yes, but the document that you prepared as a whole was not provided to employees?---The individual details would have been provided to that individual area. The other areas, yes, generally aren't as interested in the other areas' options, so we generally don't distribute to the other work areas, but that work area would have seen its individual options and choices.

*** JAMES THOMAS HUEMMER

XXN MS DOUMIT

PN1281

Can I take you to page 2167 of the court book?---Sorry, you said 67?

PN1282

Yes, that's right, 2167?---These are moulding and production - - -

PN1283

I have got a Roster Decision Summary Table?---My 206 - - -

PN1284

Sorry, it's 2167. My mistake?---Yes, okay. (Indistinct) if we're on the same page. Yes, Roster Decision Summary, yes.

PN1285

The first page of that is on 2164?---Yes.

PN1286

Going back to 2167, the column numbered 15?---Yes.

PN1287

That relates to the fabrication department?---Yes, 15, that's right, sorry. Yes. So these are department by department decisions on, yes, options, final roster options.

PN1288

In the 'Answer/Comment' column, the corresponding box on the right-hand side of number 15 says:

PN1289

Still averages 44 hours per week with no change in production hours for the company. Pay for individual to remain unchanged.

PN1290

Then, in red, it says:

PN1291

Mainly to review rules concerning sick leave, overtime -

PN1292

et cetera?---Mm.

PN1293

Obviously that's in red?---Yes.

*** JAMES THOMAS HUEMMER

XXN MS DOUMIT

PN1294

And that's because you wanted to ensure the company was not breaching any rules in relation to overtime or sick leave based on the way in which it paid its employees at that time?---Correct. As you - if you think about what we're doing, we're rearranging the 44 hours, so again I had - previously I had a 12-hour and an eight-hour block. If we made them all 8.8 hours, it's just making sure that no one

lost sick leave, no one lost, you know, any benefits, obviously, with that - if that change affected the way things were paid or the way benefits were treated. So that was work that we still needed to look at for those options to make sure that they were fully cost neutral.

PN1295

Yes?---So there's no difference in benefit.

PN1296

Thank you. Mr Huemmer, participation in the 2022 to 2023 Working Arrangements Review was voluntary; is that correct?---Yes. Yes, it is, yes.

PN1297

You don't remember everybody that participated in that review, do you?---No, there were 107, yes, employees. We do quite a few projects every year, but we do keep the data, yes, but, yes, the individual details, other than some managers that I'm, you know, still linked in with and things like that, I wouldn't - yes, I wouldn't have all that detail.

PN1298

So it's possible that Mr Lowe didn't participate in that review, Mr Russell Lowe, for example?---Because I had the - in my submissions with the pay information that the company gave us, it listed 13 employees. Three of your statements come from three of those individuals, and I had 13 participants in that. So, how we check clarity on that is that we then present those employee assessment results back to the individual work area, so that work area would have seen that we had 13 responses and, well, I guess I have no reason to believe that there's anybody - yes, that those 13 names that I had in the payroll information weren't the 13 that I also had in my sessions.

PN1299

Yes, but you don't remember Mr Lowe, for example, as an individual participating in those sessions?---No, I can't - I do not know him by name, no.

PN1300

Or Mr Curmi?---I didn't - I didn't know any of the employees by - well, or, if I did, it would've been in the short-term memory.

PN1301

Yes?---Yes.

PN1302

Thank you. No further questions.

PN1303

THE DEPUTY PRESIDENT: Thank you. Any re-examination?

PN1304

MR RAUF: Yes, Deputy President.

*** JAMES THOMAS HUEMMER

XXN MS DOUMIT

PN1305

Mr Huemmer, I just have a few questions to clarify. You were asked questions about the purpose of the review and you said that there was a focus on moulding but it was also to evaluate the performance of existing rosters. What did you mean by that?---The roster review looked at all work areas, but, as you get into different areas, obviously there are different needs in different areas and fabrication was an area that didn't need to change hours per week or capacity, but they could change shifts if they wanted to. They chose not to. But the roster review basically looked at all work areas, so those areas that, you know, worked fine or didn't need much were left alone and those areas that could have some improvement or a change in capacity, there was more work in those areas.

PN1306

Yes, thank you. You were asked questions about the casual hours worked by the different departments and you were taken to some of the charts in your document. I can take you there if you need to, but you said that that reflected - 'ad hoc' was the term you used - casual hours. What did you mean by 'ad hoc'?---That was for the overtime hours. So, when we looked at that chart that, you know, showed .3 hours for fabrication, or actually .5, so that was page 2056.

PN1307

Yes?---The number up above shows the average hours - all right - and then the numbers in the charts just show the ad hoc overtime. So, the ad hoc overtime for us is unrostered, so that indicates for us places where the current roster isn't matching the needs - right - so if fabrication needed more than the 44 hours, I would expect to see much more overtime being worked there, and there was very little ad hoc overtime because the 44 hours obviously was close to what their needs were at that time.

PN1308

Thank you Mr Huemmer. Now, you referred to the number 13 in terms of employees in fabrication who provided responses. Just so that I can understand or may clarify, am I correct to understand that, from the information you were given, there were 13 employees in that department at the time?---Yes, so in the submission JH3 on page 2121, that is payroll information that came from - came from the business and it identifies 13 workers in that department, three of them in your testimony. So I knew I had 13 employees in that department. I also had 13 Shiftwork questionnaires filled in from fabrication, so my correlation is that, yes, we got full attendance and full response.

PN1309

All right?---Because, again, I didn't have casuals and I'm not aware of others working in that department, other than these employees that are listed in that submission.

PN1310

On that page 2121 I think you have referred to?---Yes.

*** JAMES THOMAS HUEMMER

RXN MR RAUF

PN1311

Thank you?---Yes.

PN1312

Just finally, you were asked a number of questions about information shared with employees and you used the phrase that individual information was given to individual areas. From the slides or the document that you were taken to, are you able to identify what was shared with the employees in the fabrication department?---Yes. So it will be in that - on 2158, these were the options that we came up with for fabrication - okay - so, initially, there was their current and then two other options for rearranging the 44 hours, the 8.8, which, you know, don't get you - allow you to do a pick-up, a later tool pick-up later in the day, or the 11 hours, which potentially appeals to a four-day work week.

PN1313

Yes?---So we identified a couple of different ways that we could rearrange the 44 if employees were interested. This document then would have been presented to management and the unions. When we got to employees, we just presented the two options. There is, in this last - I just have to get to the right page - basically the 11-hour shift option dropped out, partly because of the survey results. So, on our questionnaire with employees, we asked them about shift length. They showed no interest in the longer shifts, so we dropped that option, thinking that there wouldn't be that much employee interest, and so, in the end, employees were presented with two options: the 12 and the four 8s, their current, and then five 8.8s were their option, and they chose not to change hours.

PN1314

Mr Huemmer, can I just perhaps ask you to look at page 2197 and ask you to just identify this document?---Yes. These would have been the options then presented to the fabrication for final decision, as in now we can actually vote, you know, we're done surveying or done creating options and the department can actually decide what it wants to do. So these were the two options they were presented with and they chose to stay with their current rather than - they didn't see any advantages with the 8.8.

PN1315

Thank you. That's the re-examination, Deputy President.

PN1316

THE DEPUTY PRESIDENT: Thank you.

PN1317

Thank you very much for attending to give evidence; you are excused?---Thank you.

<THE WITNESS WITHDREW

[3.33 PM]

*** JAMES THOMAS HUEMMER

RXN MR RAUF

PN1318

MR RAUF: Thank you, Deputy President, the final witness for the respondent is Mr Mark O'Keefe and I would just ask that he be called into the courtroom.

PN1319

THE DEPUTY PRESIDENT: Yes, thank you.

PN1320

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

PN1321

MR O'KEEFE: Mark Gordon O'Keefe, (address supplied).

<MARK GORDON O'KEEFE, SWORN

[3.35 PM]

EXAMINATION-IN-CHIEF BY MR RAUF

[3.35 PM]

PN1322

Mr O'Keefe, just for the record, could I ask you to state your full name again?---Mark Gordon O'Keefe.

PN1323

Can I ask you to state your business address or where you work from?---254 Woodpark Road, Smithfield.

PN1324

You are employed in the position of general manager, infrastructure?---That's correct.

PN1325

You have been employed in that position for 15 years?---Correct.

PN1326

And that's based out at Smithfield?---That is correct.

PN1327

I will hand up a folder. Can I ask you to just have a look at the first page of that. That's a statement that you prepared for the purposes of these proceedings?---That's correct.

PN1328

It's a statement which has 47 pages?---Yes.

PN1329

Do you confirm that that statement is true and correct to the best of your knowledge and belief?---I can confirm that yes.

PN1330

Thank you. That's the evidence-in-chief, Deputy President.

PN1331

THE DEPUTY PRESIDENT: Thank you. That will be exhibit R5.

*** MARK GORDON O'KEEFE

XN MR RAUF

EXHIBIT #R5 WITNESS STATEMENT OF MARK GORDON O'KEEFE

PN1332

MR RAUF: Thank you.

PN1333

THE DEPUTY PRESIDENT: Ms Doumit.

PN1334

MS DOUMIT: Thank you, Deputy President.

CROSS-EXAMINATION BY MS DOUMIT

[3.37 PM]

PN1335

Mr O'Keefe, have you given evidence in Commission or Court hearings before?---I have, yes.

PN1336

So you're aware that that microphone is not amplifying your voice, it's just recording you, so please do speak clearly and as loud as you can, and also please don't gesture in response to a question by nodding or shaking your head; it has to be a verbal response so that the court reporters can pick it up?---I understand.

PN1337

Thank you. You are currently the general manager of infrastructure at Vinidex?---That's correct.

PN1338

From 2002 to 2012, you were the regional general manager, central region?---That's correct.

PN1339

Prior to that, you didn't work for Vinidex?---No, that's not correct, I was working with the company. I started in the company in 1991.

PN1340

Prior to that, did you hold - prior to 2002, did you hold a management position with Vinidex?---Yes, I did.

PN1341

What was that position?---I was in a sales role.

PN1342

Okay?---What they called the southern region infrastructure manager at the time, and that was working in Melbourne. I was working in Melbourne at the time.

PN1343

So, at that time, prior to 2002, you wouldn't have had anything to do with the fabrication department at Vinidex?---No, that's not correct.

*** MARK GORDON O'KEEFE

XXN MS DOUMIT

PN1344

Okay?---I moved back from Melbourne in 1998, where I held a national - I worked out of head office.

PN1345

Yes?---Over at the (indistinct) office.

PN1346

Yes?---I then moved over to Smithfield, I believe at the end of the year 2000/2001, and then assumed the role in 2002 that we spoke of.

PN1347

So then, prior to 2001, you didn't have anything to do with the fabrication department at the Smithfield site of Vinidex?---That's correct.

PN1348

Yes, thank you. In 2002, you contacted Shiftwork Solutions; is that correct?---Yes.

PN1349

Is that because you had purchased new equipment for your moulding departments?---We were in the process of, yes.

PN1350

Yes, thank you?---Yes.

PN1351

A business analysis was prepared by Shiftwork Solutions for you?---Yes, to review the rosters.

PN1352

Can I ask you to turn to page 1339 of the court book. So that was the business analysis which was prepared by Shiftwork Solutions?---That's correct.

PN1353

You didn't provide a copy of that to employees?---We provided sections of it at various different points in time.

PN1354

But that document, as a whole, wasn't provided to employees or the unions?---No.

PN1355

Okay. Can I take you to page 1373 of the court book. That's an analysis that Shiftwork Solutions has done in respect of overtime across the departments at the Smithfield site?---Yes, it appears to be.

PN1356

And you will see from that that fabrication works the least amount of overtime?---That's correct.

*** MARK GORDON O'KEEFE

XXN MS DOUMIT

PN1357

When I say that, what I mean is, in excess of their standard hours, they work the least amount, so they are actually paid the least amount for overtime in terms of - so this is - sorry, I will rephrase that. That overtime that's used for the purposes of calculating that table is overtime above their standard working hours for each department?---I can't be sure, but it probably would be reasonable to assume.

PN1358

Okay, thank you. Can I take you to page 1375?---Yes.

PN1359

That pie chart looks at the use of casual employment at Vinindex Smithfield?---That's correct.

PN1360

The fabrication department doesn't appear in that pie chart?---That's correct.

PN1361

And casual employees were not used in the fabrication department at the time that this business analysis was prepared?---Yes, that would be correct.

PN1362

Can I ask you to turn to page 1422 of the court book. In your witness statement, you say, although you don't have a record of it, that you provided this document to all employees?---Yes, I did.

PN1363

Obviously it wasn't emailed - or was it emailed - it wasn't emailed; is that correct?---Back in those days, I suspect it would have been hard copy.

PN1364

Okay?---For the lunch rooms and noticeboards around the site.

PN1365

So you put it in lunch rooms and on noticeboards?---Yes.

PN1366

That's how you distributed it. And you see there that there's one time when employees of the fabrication department can attend?---Where does it say that, sorry?

PN1367

Just in that table, it lists all the times when the different departments can attend a session, a review meeting?---Yes.

PN1368

And fabrication only has the option to attend on Tuesday, 21 January at 6 am; do you see that?---That would be correct, yes.

*** MARK GORDON O'KEEFE

XXN MS DOUMIT

PN1369

So it's possible that somebody may not have been at work that day, for example?---Quite possible.

PN1370

And wouldn't have participated in the review?---Well, if they didn't attend work that day, they probably missed the review.

PN1371

Yes, okay. And participation in that review was voluntary?---Yes.

PN1372

Thank you. Can I ask you to turn to page 1483 of the court book. This was a table titled 'Roster Decision Summary', which was provided to you by Shiftwork Solutions; is that correct?---That appears to be the case, yes.

PN1373

In that 'Answer/Comment' box, it says, 'Still averages 44 hours per week' - just the top box on the right-hand side - 'with no change in production hours for the company, pay per individual to remain unchanged', and then, in red, it says, 'Mainly to review rules concerning sick leave and overtime'?---Yes, I see that.

PN1374

You accept that that was included because there was a concern from Shiftwork Solutions about the way in which overtime and sick leave was being applied in the fabrication department?---I can't recall.

PN1375

MR RAUF: I object to the question.

PN1376

THE DEPUTY PRESIDENT: So what's the basis of the objection?

PN1377

MR RAUF: The proposition has been put on the basis that that was a concern that Shiftwork expressed as to how things had been done in the department. That's not quite what the evidence was, but I think the witness answered by saying he can't recall.

PN1378

THE DEPUTY PRESIDENT: Ms Doumit, do you want to be heard or not?

PN1379

MS DOUMIT: No, that's okay, I'll change the question.

PN1380

THE DEPUTY PRESIDENT: Okay, thank you.

*** MARK GORDON O'KEEFE

XXN MS DOUMIT

PN1381

MS DOUMIT: Just, lastly, was there actually a review of the rules concerning sick leave and overtime in relation to the fabrication department and listed in that table?---No, not that I can recall.

PN1382

No further questions, Deputy President.

PN1383

MR RAUF: Just two questions.

RE-EXAMINATION BY MR RAUF

[3.46 PM]

PN1384

Just picking up that last exchange, Mr O'Keefe, do you recall whether there were other options put to the fabrication employees on a change to their roster?---Yes, I do.

PN1385

And what was the outcome of that?---It was sent to a vote, there were - the current - the current option that they worked to at the time and another option, and they chose to stay where they were on their current option.

PN1386

That's the re-examination, thank you, Deputy President.

PN1387

THE DEPUTY PRESIDENT: Thank you. You are excused. Thank you for coming to give evidence.

<THE WITNESS WITHDREW

[3.47 PM]

PN1388

MR RAUF: Deputy President, that concludes the evidentiary case of the respondent, which takes us to submissions and the question of whether, Deputy President, you would prefer to hear from us tomorrow or - - -

PN1389

THE DEPUTY PRESIDENT: It's not my preference, it's yours, and if you need to have a discussion about how you wish to do that, we can come back tomorrow and deal with submissions, or you can do written submissions, whatever you wish.

PN1390

MR RAUF: Our preference would be - when I say 'ours', for the respondent - is to wrap it up tomorrow rather than get written submissions, so if we could come back tomorrow morning - and I don't anticipate it will require too much time - to make oral submissions and conclude the case before lunch.

PN1391

MS DOUMIT: That's acceptable, Deputy President.

*** MARK GORDON O'KEEFE

RXN MR RAUF

PN1392

THE DEPUTY PRESIDENT: See you all at 10 o'clock in the morning.

ADJOURNED UNTIL FRIDAY, 04 AUGUST 2023

[3.48 PM]

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