



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER HUNT

C2023/1768

s.739 - Application to deal with a dispute

**Transport Workers' Union of Australia
and
Linfox Armaguard T/A Linfox Armaguard Pty Ltd
(C2023/1768)**

Armaguard Road (QLD) Agreement 2022

Brisbane

10.00 AM, FRIDAY, 18 AUGUST 2023

Continued from 17/08/2023

PN1366

THE COMMISSIONER: Good morning, parties. I note the continued appearances.

PN1367

MR WILLIAMS: Good morning, Commissioner.

PN1368

THE COMMISSIONER: Very good. All right. We have got Mr Wilkinson, first up?

PN1369

MS DALTON-BRIDGES: Yes, we do, Commissioner.

PN1370

THE COMMISSIONER: Yes. The last witness?

PN1371

MS DALTON-BRIDGES: Yes.

PN1372

THE ASSOCIATE: Thank you, Mr Wilkinson. Can you please state your full name and address.

PN1373

MR WILKINSON: James Robert Wilkinson and it's (address supplied).

<JAMES ROBERT WILKINSON, AFFIRMED [10.08 AM]

EXAMINATION-IN-CHIEF BY MS DALTON-BRIDGES [10.09 AM]

PN1374

MS DALTON-BRIDGES: Mr Wilkinson?---Good morning.

PN1375

Good morning. Do you have your statement with you?---Yes, I do.

PN1376

Can you tell me how many paragraphs are there, please?---There is 16.

PN1377

Are there any annexures with it, Mr Wilkinson?---No.

PN1378

Has there been any need to make any adjustment or change to your original statement, Mr Wilkinson?---No.

PN1379

Do you say that the statement is true and correct?---Yes.

*** JAMES ROBERT WILKINSON

XN MS DALTON-BRIDGES

PN1380

And prepared by yourself?---Yes.

PN1381

Thank you.

PN1382

THE COMMISSIONER: Thank you. You will be asked questions in cross-examination now.

CROSS-EXAMINATION BY MR WILLIAMS

[10.09 AM]

PN1383

MR WILLIAMS: Yes, hello, Mr Wilkinson, my name is Dan Williams. I am the applicant for the respondent, Linfox Armaguard?---Good morning, Mr Williams.

PN1384

Yes, just a few questions for you. I see that in your statement that you came into this relatively late in the piece?---Yes.

PN1385

So your first involvement before these proceedings was the 2022 negotiation?---Was before? Yes, I joined the Union in 2019.

PN1386

Yes. But you weren't involved in the 2019 negotiation?---No.

PN1387

No. So in your evidence in your statement, you say you met with the delegates in August 2021 and the employer referred constantly to stopping the 'lunch in truck' payment, so did you come in at the tail end of the consultation during which Linfox Armaguard had told your members that the lunch in truck payment was going to stop?---So it was a consultation from Linfox Armaguard was a meeting with all the delegates naturally.

PN1388

Yes?---On a Wednesday, I believe it was.

PN1389

Yes?---And basically turned around and said, 'As of this date, we are stopping the lunch in truck payments nationally.

PN1390

All right?---That was a conversation that – that entitled officials and lead officials as well.

PN1391

All right?---Yes.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1392

Okay, so you had some role in supporting the delegates and members through that process?---I was at a – that – consultation meeting, yes.

PN1393

Okay. All right. So that sounds like that might have been your first engagement with this issue of lunch in truck?---Yes.

PN1394

Was the – literally the employer saying it wasn't going to go ahead. Wasn't going to proceed?---Yes.

PN1395

Okay. So shortly after that, when I say shortly, it's indeed 2022 so I suppose a few months later. You have the role of putting together the log of claims for the – the Road Crew Agreement?---Yes.

PN1396

Which is the one we're arguing about today?---Yes.

PN1397

Yes. And you give some evidence about that in paragraph 8, you say you put together the Armaguard log of claims based on the TWU's National claims and what the members had requested. Tell me how the national claim is put together. As far as you're aware?---I am not aware of who put the national claims together.

PN1398

Right?---I know National Office does it.

PN1399

Okay. But when you spoke to the members, did you speak to the members collectively or to the delegates? How did you manage that?---Depending on which location in Queensland, so obviously we have got (indistinct) in Cairns, Townsville and Mackay as well, so we have got regional officials. We hand out a survey for members to give us feedback in regards to what they're seeking in their log claims.

PN1400

Okay. So did you have meetings with them at Murarrie for example?---I had a number of meetings where I have asked them to put in – fill in the surveys.

PN1401

I see. And you had support from – from the some fairly experienced delegates, too, didn't you? Mr Smythe for example?---As in what respect are you referring to that?

PN1402

Well, I am assuming that as you went through the process of putting together the log of claims, the local log of claims you consulted with the delegates?---We consulted with all members on site.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1403

But you're not telling me that you didn't consult with the delegates, are you?---We consult with all members on site.

PN1404

Well, it might go a bit easier if I ask you a question and you answer it. Did you consult with the delegates?---I consulted with everyone on site. Across all of Queensland.

PN1405

Just – do I have to ask you a question – let's do it now - as to whether the delegates were on site, do I? To get my answer?---Well, you have asked a question and I mean this with all due respect. You have asked a question if we consulted and I answered your question in regards to that I have consulted with everyone on site on what feedback they're seeking from the log of claims.

PN1406

Let's try it this way. How about I ask a specific question and you give me a specific answer?---Yes.

PN1407

Can we do that?---I - - -

PN1408

Did you consult with Nathan Smythe?---Yes.

PN1409

Did you consult with Mr Humphreys?---Yes.

PN1410

Did you consult with Mr Stephen Hurndell?---No, Stephen was an organiser.

PN1411

Did you consult with Mr Stephen Hurndell?---In what context are you asking that question? Because I have just answered that. That he was an organiser at that point in time.

PN1412

In the same context as every question I have asked in the last five minutes. The context I am putting together, the log of claims for the Road Crew Enterprise Agreement 2022?---Yes.

PN1413

You did consult with Mr Hurndell?---No.

PN1414

You did not?---No.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1415

Right? Thank you. But you consulted with Mr Smythe and Mr Humphreys?---But I have also stated that I have also consulted with every other member who is in Queensland around the log of claims, so it's just not related to two people that I consulted with - - -

PN1416

I am not understanding why we're arguing about this?---I am not asking. I am pointing to a very simple fact that I just didn't consult with just two people. I consulted with every member in the TWU across all sites in Queensland.

PN1417

Can you recall me suggesting that you didn't consult with all the members? Do you recall me suggesting that?---You just asked a very simple question in regards to did I consult with the two delegates. I also refrain that the delegates aren't the only ones that we have input with the log of claims.

PN1418

Why did you tell me that?

PN1419

THE COMMISSIONER: All right. Move on. Move on, thanks.

PN1420

MR WILLIAMS: I will move on. In paragraph 8, you say when you were discussing matters with the members and as I assume, the delegates. You say again, the language is all about lunch in truck?---Yes.

PN1421

So that was a matter of pretty serious concern?---At that point in time, the language from the company was lunch in truck. We had never had any language in respects and the first time that I was aware of lunch in truck was in 2021 when Mr Jones raised it in the consulting meeting prior to my being within the Union, lunch in truck was never an issue.

PN1422

Mr Wilkinson, I – this is going to take a long time if you make speeches every time I ask a simple question. The question is, relevant to paragraph 8 of your statement, just confirming that the issue of lunch in truck was of importance to the members when you were developing the 2022 log of claims. Is that true or not?---The language of lunch in truck. Yes.

PN1423

What do you mean the language of lunch in truck?---Well, the language at the point in time as I have stated before, was very clearly that I wasn't – we weren't aware or myself was not aware before 2021 when Mr Jones had that consulting meeting to say that they're removing the payment for lunch in truck. That was never an issue before. So the language that was used was always lunch in truck. Yes.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1424

So did you think I was making the point about lunch in truck? I am just reading from paragraph 8 of your statement?---Yes.

PN1425

Mr Wilkinson, do you have that in front of you?---Yes, I do.

PN1426

Would you mind looking at paragraph 8, please?---Yes.

PN1427

Do you agree that when you were putting together the log of claims, based on the TWU's National claims and while the member has – members requested and where again the language was all about lunch in truck?---Yes.

PN1428

That's true then is it?---The language was.

PN1429

Yes?---Yes, the language.

PN1430

There's no trap in this Mr Wilkinson. No trap?---You're entitled to ask your questions and I am entitled to respond.

PN1431

No, I am entitled to an answer to those questions, too?---Yes, and I am responding to your questions.

PN1432

So it was out of those discussions. Some National input, some consultation with the members. And some consultation for two delegates that you prepared the log of claims?---Consultation with everyone, yes.

PN1433

Yes?---Yes.

PN1434

Yes. And based on all of that, you put together the log of claims?---We draft the log of claims for our members to view the log of claims as per our process.

PN1435

And did you then seek any sort of approval from the members as to that log of claims?---Yes. The members approved our log of claims as it's their log of claims.

PN1436

All right. And did you also have to seek any form of approval from the national office or the full state office?---No.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1437

Okay. So a members driven process?---Yes.

PN1438

Okay. Thank you. Might the witness be shown the digital court book, please and the reference is, I think page 955? It's the log of claims. Actually I am sorry, it's BB1. That is the log of claims. BB1. Okay. 555 is correct?---Sorry? What number sorry?

PN1439

555, Mr Wilkinson?---Yes, I have it.

PN1440

Okay. That's your log of claim?---Yes.

PN1441

Well, I think 556. Strictly, it starts at 556?---It starts at 555, carries on 555. So, sorry, 556, 557, and finishes at 559.

PN1442

Yes. So if we go to 557, we see the claim in relation to what you described as paid meal breaks.

PN1443

THE COMMISSIONER: It's on 556 of my copy. And presumably yours, Mr Wilkinson?---Is there a claim number on that?

PN1444

Fifteen. Item 15.

PN1445

MR WILLIAMS: Fifteen.

PN1446

THE COMMISSIONER: Third from the top?---Yes.

PN1447

MR WILLIAMS: Okay. So the claim that you have made is the reinstatement of paid meal breaks required to be taken inside vehicles?---Yes.

PN1448

Yes. So a couple of things about that. So reinstatement means to give it back, something that's been lost, doesn't it?---Well, it depends on your definition in the respects of the – the company took it away.

PN1449

Yes. So reinstatement means give it back?---Give it back.

PN1450

Yes? And then paid meal breaks is probably self-explanatory, but then it's paid meal breaks which are required to be taken inside vehicles?---Yes.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1451

Correct?---Yes. That's what it states. Yes.

PN1452

Yes, so you were making a claim for the giving back of payments in meal breaks when employees were required to take the meal break inside their vehicle?---So as we go through the log of claims, obviously we give more details to companies through negotiations on what clarity that we seek through and what the meaning of that and the very simple fact and meaning of that was the drivers or the employees weren't free from duty as we normally would be.

PN1453

Well, hang on, taken inside vehicles?---Yes. So we elaborated that through the negotiations.

PN1454

I am sure you did?---Yes.

PN1455

But this is the claim that you made based on your consultation with the members and those two delegates?---Yes.

PN1456

And perhaps others, correct?---That is – that is part of it, yes.

PN1457

Yes. So you – that is claim for the reinstatement of paid meal breaks where employees were required to spend part of their meal – their meal break inside the vehicle?---But as we elaborated – you have - - -

PN1458

No, no. We will get to the negotiations?---No, you have asked a – you have asked a question - - -

PN1459

I am asking a question about the claim?--- - - -?--- - - - you have asked a question. I am entitled to respond to that question.

PN1460

Well, the question I want you to answer is related to that claim at that time?---So as we referred to the company, when the company asked us for clarification, we then gave clarification to the company that these employees aren't free from duty regardless if they're going to the cafeteria to pick up food and this is – it's not always just about having the lunch in truck.

PN1461

Well, but this is about lunch in truck though, isn't it?---No, it's paid about – the meal paid break.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1462

Well, Mr Wilkinson, every person in this court room can read. It says to be taken inside the vehicles?---Yes, and we - - -

PN1463

Please don't mislead the Commission?---I – excuse me, I take offence to that because I am not misleading that - - -

PN1464

THE COMMISSIONER: Well, you're being asked about the words on the paper?---Yes.

PN1465

Not what you later suggested to the company they might mean. That's what you're being asked?---But that's what we have put on the – Commissioner - - -

PN1466

Yes?--- - - - that's what we put on the paper - - -

PN1467

Yes, but do you accept that the words on the paper are relevant to a meal break being required to be taken inside the vehicle?---At that point in time when we elaborated to the company, that's what we have put in and we elaborate through the negotiations. That's the point that I am trying to get to, Commissioner.

PN1468

I hear that's your evidence?---Yes.

PN1469

But that's not what you're being asked?---No. But Commissioner - - -

PN1470

Okay? So please listen - - -?--- - - - that's what is on the paper - - -

PN1471

Please – okay, that is what's on the paper. Thank you.

PN1472

MR WILLIAMS: Thank you. And if we – I will just go over a couple of pages to BB4, which I think commences at page 564. Mr Gleeson will quickly tell me if I am wrong about that.

PN1473

THE COMMISSIONER: What page, sorry?

PN1474

MR WILLIAMS: Page 564, Commissioner. That is the witness marking – or the attachment marking, I'm sorry.

PN1475

Do you see there is a table there, as well?---On 565?

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1476

Yes?---Yes.

PN1477

Okay. So is that your document or is that a company document?---That's a company document.

PN1478

Well, let's go over to page 562 and you see that the company has recorded your claim 15?

PN1479

THE COMMISSIONER: That would be 567, item 15.

PN1480

MR WILLIAMS: I'm sorry, I'm quite disorganised. It must be. In fact I have written down '567', it just looks like a '2'.

PN1481

Sorry, Mr Wilkinson, 567?---Yes.

PN1482

Then you see some support for what you say about a change in approach in your response. I'm reading down the bottom, essentially what the meal breaks paid?---What are you – sorry, I don't understand the question.

PN1483

Yes, sorry, Mr Wilkinson, I should have asked you to assume that – well, if you go back to 565, the middle column is 'Clarification' and I assume that means that that records any additional clarification from the union. I could be wrong about that.

PN1484

THE COMMISSIONER: This is Mr Byrne's statement, which he at paragraph 17 of his statement says that he –

PN1485

spoke during the meeting, but I did not provide to the TWU. However, this document reflects the responses I provided during the meeting.

PN1486

MR WILLIAMS: Yes, you might have seen it before, but is it the case that by this stage, by the time this table was completed - and I suppose you don't know when it was completed, but at a later stage in the negotiation you had really revised things a little bit to basically, as it's recorded there, 'Essentially want meal breaks paid'?---Sorry, I don't understand that question as this is a company's document.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1487

Well, even though it's a company's document you can still answer my question. Perhaps it wasn't put very well. Is this consistent with your evidence you gave before that there were clarifications provided in relation to what you're really seeking under claim 15?---(No audible reply)

PN1488

Where it says there, for example 'Essentially want meal breaks paid'?---Sorry, I'm just reading. Is it claim 15 or item 15?

PN1489

Item 15?---Item 15:

PN1490

Reinstatement of paid meal breaks required to be taken inside the truck.

PN1491

That was the claim, yes.

PN1492

Well, okay, that's your answer. The company's answer appears to be:

PN1493

Rejected as per current EA terms, unpaid meal break unless directed to eat in the truck.

PN1494

?---That was the company's response.

PN1495

I know you haven't seen the document before, but does that accord with what you recall the company's response was to that claim?---The company's response to that claim is that they weren't directing employees to have the meal breaks in their truck.

PN1496

Yes?---But as we go into my statement in the respects of once I started doing research in - - -

PN1497

Well, we will come to that because I'm interested in when that research was undertaken. We'll definitely come to that. At the moment I'm just focusing on whether you can recall that being an accurate summary of what the company's response was?---The company rejected the claim.

PN1498

Yes, but they rejected it on the basis that the current EA terms didn't permit it?---Sorry, I'm not understanding that question because - - -

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1499

Okay, so their explanation for rejecting it was that the current – they wanted to stick to the current enterprise agreement terms which were that meal breaks were unpaid unless directed to eat in the truck?---But there is also another provision was in that clause for paid meal breaks.

PN1500

Well, let's try and focus because it will be a long day. What I'm asking you about now is whether that's an accurate recollection of the company's position in rejecting your claim?---No, the - - -

PN1501

Is that a difficult question?---The company – my recollection of it is the company rejected the claim because they were of the view that they wanted to stick with the current clause in the agreement, but, as I stated before, the current clause in the agreement also has another provision where the employees will be paid a minimum of 15 minutes and that's still in the agreement now.

PN1502

You see, look, the problem – there is a problem with that, isn't there, Mr Wilkinson, because you have consulted with the employees, the members, and you've consulted with the delegates. You have made a claim which is set out in the left-hand column there:

PN1503

The reinstatement of paid meal breaks required to be taken inside vehicles.

PN1504

So you haven't, when the claim was formulated, made any broader statement than that; that's right?---Well, we clarified with the company - - -

PN1505

At that time when the claim was formulated?---You're asking a specific question - - -

PN1506

That's right?--- - - - at this point, yes.

PN1507

I want a specific answer?---When we reaffirmed - - -

PN1508

Mr Wilkinson, you're not answering my question.

PN1509

THE COMMISSIONER: We have done it before. We know that the claim was as per that second column there that says:

PN1510

The reinstatement of paid meal breaks required to be taken inside vehicles.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1511

You need to listen very clearly to the question that is being asked of you and not give the answer that you want to give, okay?---Commissioner, the answer was in the respects of it is when – we understand what is on the log of claims and we understand what item 15 on this document on 567 is, but where we go to the position around when we explained that the company does through the negotiations of clarifying what they're entitled to and what the claims are, this is where we go forward, so to answer that question - - -

PN1512

Well, you need to just answer the questions that are being put to you, okay?---But as a short answer, Commissioner, I can't answer that.

PN1513

No, you were just asked what was the claim that you made at the time of putting the log of claims together?---Yes.

PN1514

You need to repeat what is written there in that first column, then Mr Williams will take you to his next question. This is cross-examination?---Yes, I understand that, Commissioner.

PN1515

He drives the questions that he wants to ask of you?---Yes, I understand that, Commissioner.

PN1516

Okay, so please listen very carefully?---Yes.

PN1517

MR WILLIAMS: Now, Mr Wilkinson, we will go to that second question and so at a point in time, I think - according to your statement it appears to be at least chronologically in your statement after the 2022 agreement was concluded, so I'm looking at paragraph 11 – well, at paragraph 10 you say that you decided to roll over the current agreement, which occurred, then you go on to say:

PN1518

However, as I began to research the background of our position –

PN1519

so we can take it for granted that that research you're talking about happened after the 2022 agreement was finalised?---No.

PN1520

Well, is your statement intended to mislead the Commission then?---No.

PN1521

When did you do this research?---My research continued – the research for the provision around all agreements continue to happen and for this one here we had a number of states that we were researching, we had a number of agreements - - -

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1522

What has this got to do with my question or your answer – or your evidence?

PN1523

THE COMMISSIONER: Let him continue, thank you.

PN1524

MR WILLIAMS: I'm sorry, Commissioner.

PN1525

THE WITNESS: The documents that Armaguard in Queensland, the country branch agreements - was also agreement across the different states on the research around the provisions that are in the agreement. These researches continue to happen all the time.

PN1526

MR WILLIAMS: When you were formulating the log of the claim, which appears at item 15:

PN1527

The reinstatement of paid meal breaks required to be taken inside the vehicles

—

PN1528

when you were formulating that and discussing that with the members you must have gone to the agreement and had a look at what the provision said, mustn't you?---Yes.

PN1529

So you looked at it then?---I looked at it then, but we also – once we stated, when we do the research how that provision came around there is just not one agreement, there was multiple agreements - - -

PN1530

All right?--- - - - from 2019, 2016, moving forward; the research on those agreements, the research on how these clauses were built to come to these wordings within it. It's just not an easy task to do.

PN1531

Well, no, it's not. I accept it's always difficult. I'm interested in when, but you just told me at the time that you formulated that claim you had least taken the trouble to go and have a look at the clause?---Yes.

PN1532

Right, so the delegates and the members weren't saying to you, 'We've already got this entitlement. They have taken it away wrongly', were they?---(No audible reply)

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1533

They weren't saying to you, 'The company is in breach of the enterprise agreement by taking away lunch in truck'?---Were they? We are talking about two different things - - -

PN1534

No, no, we're talking about one thing and that is what has - - -?---Okay, can I - - -

PN1535

- - - been the subject matter of my question?---Can I seek clarification from yourself in regards to - as our log of claims stated it was a paid meal break, as the company explained it to us it was lunch in truck, so I'm little bit confused with that question, Commissioner.

PN1536

THE COMMISSIONER: I just want to go back to your - - -?---Yes.

PN1537

Paragraph 10 says -

PN1538

in Queensland, after taking protected industrial action.

PN1539

?---Yes.

PN1540

That is not until, what, July or August, isn't it?---I can't remember the exact dates that we took protected - - -

PN1541

Well, I refused the PABO - - -?---Yes.

PN1542

- - - early in July?---Yes.

PN1543

And then one was issued, I think, about 11 or 15 July or so?---Around this time.

PN1544

Yes?---Yes, Commissioner, yes.

PN1545

Well, your evidence here says that after that you decided to roll over the current agreement -

PN1546

we agreed that lunch in truck payment was still an outstanding issue.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1547

So that is the time frame. You then said, 'However, as I began to research', so when were you researching?---I started researching in early 2022, Commissioner. Like I said, in the respects of it there was multiple agreements that we had to look through; from country agreements to the state agreement, to the provisions around the 2014, the notes that we had to scale through on paper versions. It wasn't a simple task that it could be done in a week, it wasn't a simple task that it could be done in a month.

PN1548

We are still in - it was in a position that once the company was in a position around the language of 'lunch in truck' on when we started - and at that time I wasn't the industry coordinator for cash-in-transit, I was just an official in Murarrie that was looking after the negotiations. It wasn't until I become the industry coordinator and before that where we had a lot of conversations internally with different officials, with different states in regards to the provisions around agreements, the wording, the branches bringing - sorry, the different agreements coming together - - -

PN1549

So does your paragraphs 10 and 11 not make sense then?---Commissioner, it probably could have been worded a little bit differently in the respects of it, around when I started looking at it, but it wasn't a simple task to go through all the states, plus Queensland, and the different agreements.

PN1550

Did you form in your mind that the company had unlawfully removed the payment in August 2021 from the 2019 agreement?---In my view, Commissioner, yes, because the provision is within the agreement that states that employees would be paid as a minimum 15 minutes for security reasons. That's where I view the language that the company used around lunch in truck to the research that - - -

PN1551

Well, if you were so sure about that, why would you be asking for reinstatement if you thought you're on a sure thing?---Well, I was in a position at that time that, very simply, the language around it when we drafted the log of claims was the language of lunch in truck and the very view of the lunch in truck provisions. The simple respects around that, around what other officials from different states were, their language that they were using at the same time was around their provisions aren't the same as ours in Queensland, so the reinstatement of that. Once we got into the research and the avenue of how that clause come about, and the different agreements that are in the position that the - Queensland only has that one paragraph or one sentence within in the agreement. I had to research on the view around that, but I couldn't be in a position where - the company and the union agreed to start negotiations in those respects, but I couldn't be in a position to delay the negotiations; why I would be in a position to do the research at the same time, because, like I said, these - - -

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1552

You haven't given me a month of when you started this research or came to the view that you thought members had a firm entitlement to the meal break that they weren't being paid?---The members' view of the entitlement was around the lunch in truck payment when directed and that was the language that the company was using, that, 'We're not directing the employees to have lunch in truck.' When I started this research on the different agreements, on where it was, it was in early 2022, Commissioner. I can't remember the exact date on when I started the research, but the language from the company was, 'We're removing this - - -'

PN1553

They had already removed it?---They had already removed it.

PN1554

Yes?---Even the consultation, 'We're removing it from this date', very simply in the respects of that. I then went away and looked at it, and spoke to different people, different officials in respects around what does this one sentence mean, because the language – and every other agreement – as I look at the South Australia agreement - - -

PN1555

I'm not interested in that?---No, but, Commissioner, as I look at those different agreements our provision was in the Queensland agreement going back to 2016 - - -

PN1556

It makes no sense then that you would be asking for reinstatement of something - - -?---Yes.

PN1557

- - - and also saying that you're going to drop the claim?---Because the company – our company was in a position that they approached us about asking for a one-year rollover agreement.

PN1558

And the meeting notes say that if you get 7 per cent you will drop the claim?---I can't answer on that because I didn't raise that myself, Commissioner. That could have been one of the delegates that raised that in the respects around it and they're in a position – like, I get directed as negotiations from our members on what we are asked to withdraw, keep a hold of through the position of - - -

PN1559

Well, go to page 608 – go to 606. You're at a meeting on 20 July. On the top of page 608 it says:

PN1560

The TWU will withdraw claim 15 pending an offer from the company.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1561

So how can you be withdrawing a claim that – you're sitting on a little nest there thinking that you're on a sure thing; this is an entitlement. Do you think that

Linfox Armaguard are nave or stupid?---Commissioner, may I ask what this document on 606 – is this a minute note from the company or is this - - -

PN1562

Yes?---So this is from the company and which point are we - - -

PN1563

You're recorded as being there, at the top of page 606?---Sorry, Commissioner, I just can't see it.

PN1564

Over on 608. Not long after the agreement is struck, so are you sitting on this knowledge, are you, that you have done all this research and you think that employees are entitled to the payment under the 2019 agreement, and if the words remain the same in the 2022 agreement they are also entitled to it?---The company, after the first industrial action that we took for 48 hours, we were in a position – we lodged with the company two 24 hours and then the two-hour – I believe it was a Monday, Tuesday and Wednesday. We met with the company. They requested that we meet with the company; we acknowledged that meeting with the company. We spoke about a lot of things on that day in the respects around a one-year agreement in a number of claims, on how to resolve the issue around industrial action. We then filed for another five days' industrial meeting and those positions around that. We had a conversation in it, but in the respects of my knowledge, in the respects that the TWU would withdraw claim 15 in those respects, was in the respects that - I didn't take these notes so at no point in my view we said that we would be in that position to withdraw that because we were talking about two different provisions within the agreement.

PN1565

That's really hard to accept, Mr Wilkinson. I mean, the agreement was struck shortly thereafter. There is no further evidence that it was pressed. Do you think it was pressed?---Commissioner, the company come to us after five days of industrial action where very little employees actually attended work.

PN1566

Do you want to tell me how you think this item was pressed and not withdrawn?---I don't understand that question, Commissioner, because once we took the five days' industrial action the company was trying to seek resolution to this and the company come to, 'Let's roll over the agreement - - -'

PN1567

Which means that Linfox Armaguard think the status quo remains where they have told you they don't believe they're exposed?---They explained to us that they wanted to roll over their view - and I can't talk on their view, on what they formed, but I believe that they were in a position that they believed that they were right.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1568

Yes?---But we were still in a position of looking on how that interpretation in that agreement - - -

PN1569

Did you tell them that; that you were sitting on this nugget of truth that you believed - - -?---I was still researching once the agreement - - -

PN1570

But you didn't tell them that you had a firm view that under the 2019 agreement it was payable?---Commissioner, I have been speaking with the company for a long time around our view around the payment that they have taken away from our members and the employees of the business. That wasn't right because of the agreement and the wording, and they're not free and clear to have a meal break as I would be free and clear - - -

PN1571

When did you have these discussions, because this is the first time I'm hearing about - - -?---We have had these discussions on many occasions with the company - - -

PN1572

How would I know, Mr Wilkinson?---These come up through the enterprise agreement and this is what I was trying to explain before, Commissioner, in respects with when we presented the log of claims and we had a number of discussions with the company through the bargaining process about our argument in respects that these employees are not free and clear to do – and go for – and if I use this language and these were the words that I said; that an employee at Armaguard cannot go and get a massage in their lunch break because they're not free and clear because they have a weapon that they have to look after. If they go and have a massage like a normal employee would be – and I used this example to the company in the respects that if I was going to have a meal break today, that if I chose to go and get a massage I could do that, but unfortunately - - -

PN1573

Where is this in any of your evidence?---These were in the conversations that we had within the agreements, Commissioner, and this is what I was explaining to you before as we - - -

PN1574

So did you tell them during bargaining, 'You're wrong. We think you're exposed of the 2019 agreement and we would like the same words in the 2022 agreement because we'll get you there'?---No, the company actually approached us around rolling over the agreement with no word change - - -

PN1575

Did you tell them that you think that they're exposed under the 2019 agreement?---At that point in time no, because I was still doing research.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1576

Right, and you hadn't brought a dispute with the 2019 agreement. You were quite content, were you, to let the words roll over?---I wasn't content at all, Commissioner. I have also got my bosses that direct me on which way we go and at that point in time the ACT – because of the language the ACT and Tasmania branches were running a dispute with Linfox Armaguard at that time. As I was doing the researchers and spoke to my industrial department and other officials around interpretations of an agreement, interpretations in those respects of it, I was also restricted on raising disputes at the same time from my - - -

PN1577

All right. Thank you, Mr Williams, ask away.

PN1578

MR WILLIAMS: Mr Wilkinson, I'm going to ask you some questions and ask you to answer them. Based on those answers, I may make a submission to the Commissioner that your evidence should be disregarded on the basis it's not truthful, so I just want to be very clear about that. We're not playing a game here. We are in proceedings, they are Commission proceedings and you're under oath. You understand that, don't you?---Yes.

PN1579

All right. Go to attachment BB10 to the witness statement of Blake Byrne, which is 609?---Yes.

PN1580

So that's a statutory declaration by you, isn't it?---609?

PN1581

Yes?---I have it of Mr Byrne.

PN1582

THE COMMISSIONER: Yes, just over the page. It's just the - - -

PN1583

MR WILLIAMS: I'm sorry, I'm giving you the reference to - the exhibit marked reference. That's your statutory declaration?---(No audible reply)

PN1584

THE COMMISSIONER: From 610?---That's the union's, yes.

PN1585

MR WILLIAMS: 'I, James Wilkinson'?---Yes.

PN1586

What do you mean it's the union's, it's yours?---It's on behalf - it's my understanding this is an application.

PN1587

Don't you know what a statutory declaration is?---I understand what a statutory - -
-

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1588

What is your understanding of it?---That we put a statement together. I'm just referring to what the stat dec is in the respects of that.

PN1589

You can certainly take your time, Mr Wilkinson - - -?---Yes.

PN1590

- - - but if you're going to tell me that that's not your statutory declaration, then - -
-

PN1591

MS DALTON-BRIDGES: Objection.

PN1592

THE COMMISSIONER: Well, no – tell me what your objection is, Ms Dalton-Bridges.

PN1593

MS DALTON-BRIDGES: Mr Williams is putting words in Mr Wilkinson's mouth. He is not trying to say it's not his statutory declaration - - -

PN1594

THE COMMISSIONER: Well, he did, Ms Dalton-Bridges.

PN1595

MS DALTON-BRIDGES: I don't believe he did, Commissioner. I think it's being unfair.

PN1596

THE COMMISSIONER: I know that he did.

PN1597

I will sit and explain this to you, Mr Wilkinson?---Yes.

PN1598

When you seek a PABO - - -?---Yes.

PN1599

- - - we know that the union makes an application, but you need to sign a stat dec and you've signed a stat dec?---Yes.

PN1600

It's yours?---Yes.

PN1601

Only an individual can sign a stat dec?---Yes.

PN1602

Declare it's true and correct?---Yes.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1603

An entity can't do that, it's a real person who does that?---Yes. As I've now read the declaration, Commissioner, I understand what it is for. We do a number of stat decs on a number of things and I was a little bit confused on what the stat decs are.

PN1604

All right. Very good. Thank you, Mr Williams.

PN1605

MR WILLIAMS: Leading up to this, Mr Wilkinson, if you remember, the union had made an application for a PABO - a protected action ballot order – and had not succeeded. Do you remember that?---Yes.

PN1606

Do you remember that the reasons it didn't succeed was because the Commissioner was not satisfied that at that point the union was genuinely trying to reach agreement?---I wouldn't say generally trying to reach an agreement. My recollection of that hearing was the company made a submission to the Commissioner in the respects that we have only had a number of meetings and that we planned a number of – two meetings for the following two weeks. On those bases the Commissioner didn't accept the PABO. We met within those parameters that the company sat down in the respects of it and then granted a protected action ballot after those two meetings.

PN1607

Well, let's do it the long way. Could you go to the Commissioner's decision, which is also in the digital court book commencing at 580. It's possible that 580 is the attachment marking again, but you can see the decision there?---Yes.

PN1608

8 July 2022?---Yes.

PN1609

If we look to the end of that decision, the last page of it, page 20 - - -?---Sorry, what page does it end at?

PN1610

I'll get that for you.

PN1611

THE COMMISSIONER: Page 600.

PN1612

MR WILLIAMS: Page 600 is correct?---Yes.

PN1613

The conclusion of paragraph 123 - feel free to read the decision in its entirety, but the Commissioner's conclusion was that:

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1614

For the reasons given above, I am not satisfied that the TWU is presently genuinely trying to reach an agreement with the respondent.

PN1615

Do you agree that that was the basis of the Commissioner's rejection of the union's - - -?---That was the Commissioner's ruling, yes.

PN1616

Yes, she wasn't satisfied that you were 'presently genuinely trying to reach an agreement with the respondent'?---That was her ruling, yes.

PN1617

Yes, so you had some more negotiations?---Yes.

PN1618

Then you came back for another go?---Yes.

PN1619

Now I will take you back to page 610, which is your statutory declaration?---Yes.

PN1620

If you go over to page 612 – sorry, I beg your pardon, let me take you to page 611 and just direct you to the heading down the bottom of the page where it says, 'Describe how you have been and are genuinely trying to reach agreement.' Let me know when you have seen that?---Yes.

PN1621

All right?---2.1.

PN1622

Yes, 2.1. So you understood that what you were trying to achieve in this declaration was persuade the Commissioner, who had knocked you back once, that you were now genuinely trying to reach agreement?---Yes.

PN1623

Yes?---Yes.

PN1624

So over to page 612?---Yes.

PN1625

If you go down to item 8 you see it says:

PN1626

The TWU had at this time put to one side the lunch in the truck issue.

PN1627

?---Yes.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1628

So contrary to what you might have indicated to the Commissioner, it wasn't just the delegates who decided to put it to one side, that was the TWU's position?---But if you're asking a definition of what is – and correct me if I'm wrong, but if you're asking a definition on what 'putting aside' that claim is, that can mean a number of things. 'Putting aside' wasn't withdrawing the claim.

PN1629

Wait a minute, Mr Wilkinson, you're attempting to persuade the Commissioner that she should accept that some evidence that you were negotiating or genuinely trying to reach agreement was that you had made a concession on claim 15?---No.

PN1630

You didn't mean that?---Sorry, can you please repeat that. I'm not understanding the question because - - -

PN1631

The Commissioner - I'm sorry, please go on if you - this is in your statutory declaration intended to persuade the Commissioner that the TWU is now genuinely trying to reach agreement, and you've pointed to the fact that the TWU, it's your union, have at this time put to one side the lunch in truck issue?---It doesn't mean that we've withdrawn that claim.

PN1632

If you hadn't withdrawn it why tell the Commissioner you had, or that you were setting it to one side.

PN1633

THE COMMISSIONER: Just to be very clear it was an application to the Commission, not to me.

PN1634

MR WILLIAMS: Of course, Commissioner, yes.

PN1635

THE WITNESS: But putting something to a side doesn't mean that it's been withdrawn.

PN1636

MR WILLIAMS: Yes, I'm sorry, Commissioner, that's quite correct, the first PABO decision was yours, but it went to the Vice President the second time. Sorry, Mr Wilkinson - - -?---So putting something to the side doesn't mean it's withdrawn.

PN1637

But you were trying to persuade the Commission that you had?---At what point - I don't understand that question, because putting something to aside doesn't mean it's withdrawn.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1638

What was your intention?---We parked those items. There's a number of things that we parked and we took - down the track we get to things that we can to agree on within items doesn't mean that we put something to aside that's been withdrawn.

PN1639

Well, surely you're not suggesting that you are telling the Commission that as evidence that you were genuinely trying to reach agreement that you put to one side the lunch in truck issue, but as soon as you got the PABO approved you were going to raise it again. That's not your evidence, is it?---I don't understand that question, Commissioner, because at no time does this statement here in the respects of the claim made as where we said that we parked it to one side that we were withdrawing it. It has always been on the table.

PN1640

Go back to - - -

PN1641

THE COMMISSIONER: I am trying to understand the evidence that you gave earlier, because I took you to 606, which is the meeting on 20 July - - -?---Yes.

PN1642

- - - where it appears the company's records record that you would withdraw the claim pinning it on the company. The following day you make the stat dec where in your view it's parked, it's put to the side?---Yes.

PN1643

But I thought your evidence to me earlier was that you can't recall what was said in that meeting on 20 July?---I didn't make that statement or withdrawing that claim.

PN1644

But do you remember what was said?---There was a lot of conversations around a claim about an extra percentage in an hourly increase for that payment. It was - at no point was that claim withdrawn.

PN1645

Why would you need to - I come back to why would you need to get something for something that you've already got?---Because the company at that point in time, Commissioner, wasn't paying that provision.

PN1646

Yes, but you thought, did you, that they were wrong about that?---I thought as we still do the research and was in the process my first impression that the company withdrawing the lunch in truck payment, as they so-called, at that point in time wasn't the right as per the agreement.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1647

And you formed this view some time earlier in 2022 when you were doing your research. You still haven't given me a month as to when you think you might

have been doing the research. It would be helpful if you could. But by mid July you're still keeping that up your sleeve, are you?---No, because I was still doing research, Commissioner, like I said in those respects.

PN1648

Ask away, thank you.

PN1649

MR WILLIAMS: Thank you. Can we go back to page 608, and here's the company's record. The witness who recorded that will come along and your advocate can cross-examine him if she wants to. But it says, 'TWU will withdraw claim 15 pending an offer from the company.' Do you see that?---That's the company's record. I do see it, yes.

PN1650

Let's just assume for the moment that that's an accurate record of what was said by someone on the TWU side. Let's assume that for the moment?---It was the company's records. Okay.

PN1651

Yes. 'TWU will withdraw claim 15 pending an offer from the company.' So the clear implication of that is that the TWU is saying we'll withdraw that claim depending on how good your wage offer is?---Well, that's the company's - that's the company's interpretation of that. I can't answer on the company's behalf.

PN1652

But if that's a reasonably correct description of what was said then that's what the company would assume, that TWU will drop claim 15, lunch in truck, as long as we make a good enough offer?---But that's an assumption from the company. These are the company's minutes.

PN1653

So you're not prepared to answer my question?---That's an assumption. I don't think I can answer that. It's an assumption on what the company may have thought.

PN1654

THE COMMISSIONER: Mr Humphreys gives evidence that you're after 7 per cent?---Yes.

PN1655

He says, 'The reason we want 7 per cent is they've taken 4 per cent off us due to the removal of the paid meal break allowance'?---That's Mr Humphreys' - - -

PN1656

His evidence I thought yesterday was - it was put to him if you got - it was put to one of the witnesses - if you get 7 per cent that would have done it for you, but you still carry the wording over. Is that double dipping?---I don't understand.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1657

Imagine if you did get 7 per cent - - -?---Yes.

PN1658

- - - on the basis that the employer thought we will give you 7 per cent and we're okay, because we don't have an exposure, but you do think they have an exposure under the 2019 agreement carrying across to the 2022 agreement?---When this - when this agreement was approached for a one year agreement, Commissioner, in respect of rolling it over, as I stated before we were still doing the research, and my assumption at that time is was the company - as they weren't directing employees to have lunch in truck was a paragraph and this went through the dispute meeting with Mr Byrne and the paragraph states very clearly that for a minimum they would be paid 15 minutes at time and a half. There's a lot of advice in regards to that that we had to seek in the respects of it, and then once again how do we come to that, that provision, because from 2016 when it come in, in regards to that provision into the agreement.

PN1659

I am not sure you answered my question. But ask away, thanks.

PN1660

MR WILLIAMS: Thank you. Mr Wilkinson, when the company - sorry, there was a rollover, it was a rollover with the pay rise, wasn't it?---Yes.

PN1661

So the company agreed to give the crew, the members a pay rise?---Yes.

PN1662

And it's inevitable, isn't it, from the records we've looked at that they decided to give the pay rise based on your advice to them that you were not pressing lunch in truck in that enterprise agreement?---No. We took a number of occasions that we took industrial action.

PN1663

Mr Wilkinson, I want to caution you again. I'm going to have to make a submission to the Commissioner about what evidence is believed and what isn't, and on the basis of what I'm hearing I'm going to make a submission that the Commissioner should make a finding that your evidence shouldn't be believed, which is a pretty serious thing, and I wouldn't make the submission lightly. But you are not surely telling me that when the company made its proposal for the rollover it didn't understand from the record we have seen that you had withdrawn or set aside for that agreement the lunch in truck payment or the meal break payment, whatever you want to call it?---But we referred to - if we refer to our second case when we put it aside at no point was that withdrawn from the company in those respects. And then after a number of days of industrial action and the company stating very clearly how can we resolve this, I don't understand the question that you're saying.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1664

THE COMMISSIONER: I had already asked you how was that item pressed after the industrial action was taken. How was that specific item further discussed or pressed?---Well, the company come back to us in the respects of they put an offer on the table as a one year rollover agreement with a pay increase and a sign on bonus. We then as per good faith bargaining went and approached that with our members in the respects of this is what the company's put on the table. The members said, okay, it's a one year agreement, let's go with that.

PN1665

So if you're telling the Commission on 21 July in your stat dec that you've put it to the side, how has that changed between when you write that and when the agreement is voted on by the employees?---Commissioner, we put a number of items to the side through - - -

PN1666

Tell me specifically how this comes up again, the lunch in truck or the meal - it just stays the same, doesn't it?---The wording stays the same, but, Commissioner, there was a lot of items within our log of claims that we put to the side that didn't make to the document.

PN1667

Mr Wilkinson, you're not getting it. You tell the Commission in your second PABO application that it's put to the side. The company - you may not know, but they think you've withdrawn it. We will hear who the company thinks might have said that during the meeting, but you're there in the meeting. But you tell the Commission it's put to the side, and then the agreement is voted upon a short time thereafter. But how does it come up at all in that intervening time between 21 July and when the agreement is voted upon?---It goes to the same question of a number of - I understand what you're saying, but there's also we're focusing on one part of the log of claims. There was - - -

PN1668

That's all I'm interested in?---But we say that - the company come back with an offer after seven days industrial action. We had 48 hours just the first time. Then we went on five days industrial action at the time. The company wanted the employees in the document to come through. They come to us - - -

PN1669

So is it still set aside?---It hasn't been - a lot of the claims were.

PN1670

Is the reinstatement of the allowance set aside?---A lot of - a lot of the clauses were set aside because the company approached us and asked us for a rollover agreement or a one year agreement that would roll - - -

PN1671

I'm asking you - - -?---Yes.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1672

- - - your log of claims, item 15, is the reinstatement of the allowance set aside when the agreement is voted upon by the employees?---It was set aside, but it wasn't withdrawn.

PN1673

How does that work?---Well, parking what we - - -

PN1674

MS DALTON-BRIDGES: (Indistinct).

PN1675

THE COMMISSIONER: I beg your pardon, Ms Dalton-Bridges, please do not interrupt, thank you. How does it change from you telling the Commission it's set aside on 21 July to when the agreement is voted on? It has to have been set aside, right?---Commissioner, I think - I think I may be misunderstanding, because the very simple fact is of when I say something's been put to the side doesn't mean it's been withdrawn from the union. If I - - -

PN1676

How is it agitated then between 21 July when the agreement is made? Tell me specifically only that time. Is it agitated?---I don't understand that question, because the company come to us asking how do we resolve this. The company put an offer to us. We then consulted with our members, and the members agreed with the offer that they put on the table.

PN1677

Which is a rollover?---Which was a rollover.

PN1678

Right. So that item is not agitated. Do you accept that?---I don't - I don't accept that it wasn't agitated, because the - - -

PN1679

Tell me how it was agitated?---But I don't understand, Commissioner, in the respects of it when the company comes to us and asks us how can we resolve an agreement and they have actually been put in a position to put an offer, and as - - -

PN1680

I understand globally, but that item - if I say it wasn't agitated am I wrong?---I don't understand that question.

PN1681

Well, I can't help you then, Mr Wilkinson?---Commissioner, I'm trying to explain that. You're talking about an agitation in regards to from the company putting to us an offer. We going out and consulting with our members to see if the members accept the offer that's been put on the table.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1682

Knowing that the company would have read your statutory declaration they believe that as of when you made that application it's set aside?---It was put to the side, it wasn't - - -

PN1683

And did anything change between when that application was made and the company received your statutory declaration to when the agreement was voted upon?---I'm a little bit lost on when you say put things to the side, because we put a lot of things to the side and - - -

PN1684

You specifically put in your statutory declaration that that item was put to the side, and that's what the business would have read. What changed, if anything, in respect of that item between when you made your statutory declaration and the agreement was voted upon?---Nothing.

PN1685

Right. Thank you?---Because it wasn't withdrawn. I mean this with all due respect, that putting something to the side or parking an item - - -

PN1686

I have moved on to was it agitated and you have not been able to provide any evidence that it was agitated?---But once again, Commissioner, it was in the respects of putting something to the side to withdrawing a claim from a log of claims. If we were withdrawing a claim from the log of claims, and I will use this as a hypothetical. If I was in the intention of being in a position to withdraw the claim to make an agreement I would have - - -

PN1687

You didn't say, you didn't tell them we still press it or we withdraw it. You didn't say anything about that item?---We didn't - we didn't say a lot about a number of items.

PN1688

So is it fair for the company to assume that because you put in your statutory declaration it's parked, your request for a reinstatement of it is parked?---Is parked, not withdrawn.

PN1689

I understand?---Just like when the company come to us in the respects of to get this agreement done here is a one year offer, here is a percentage increase, here is a \$2,000 sign on bonus, consult with your members. There are a lot of our items on the log of claims.

PN1690

I am not interested in those items, I'm interested in this one. Your evidence is understood. Thank you, ask away.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1691

MR WILLIAMS: Thank you. Mr Wilkinson, the company would have at least been entitled to assume that the issue of lunch in truck was locked away for at least the duration of the rollover agreement, wouldn't they, and then after that come what may?---We're talking about the paid meal break. The lunch in truck - -
-

PN1692

We don't need to argue about terminology, there's plenty of other things to argue about. That claim?---It would be - it would be parked, or like a lot of our items in the log of claims once the company offered us an offer that we took back to our members.

PN1693

So you had taken it up as a claim in the bargaining?---Yes.

PN1694

You had set it to one side. A rollover had been agreed with a pay rise, and the company would have been perfectly entitled to assume that that was it, at least until the next negotiation for another enterprise agreement?---I can't answer on what the company would assume.

PN1695

All right then. Thank you. I will make a submission about that. Mr Wilkinson, I can show you a record if necessary. Would you agree that the rollover agreement was approved by the Commission on 8 November 2022, and therefore came into effect on 15 November 2022?---I can't - without having it in front of me I can't give the exact dates. I know the agreement was approved.

PN1696

That is a fact and it's in the TWU's authorities. But do you remember at least not that long ago, that is in November, the agreement was approved and came into operation?---I can't - it was approved. I can assure you that it was approved. I know it was approved, but I can't tell you the dates without looking at when it was approved from the Commission, but it was approved.

PN1697

All right. That's certainly the record. And at that point of course the pay rises are locked in, aren't they?---From the Commission's approval, yes.

PN1698

So could you then go to in the record, the application in these proceedings, page 3. I'm sorry, I withdraw that, that's not the document I want to take you to. I want to take you to your dispute notification,

PN1699

THE COMMISSIONER: That's what the F10 is.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1700

MR WILLIAMS: It's actually oddly - (indistinct) the F10, Commissioner, the original dispute notification, I have it at record page 1437.

PN1701

THE WITNESS: Sorry, what was the number?

PN1702

MR WILLIAMS: 1437.

PN1703

THE COMMISSIONER: Do you have a second volume?

PN1704

MR WILLIAMS: I think it's in the statement of Mr Naidoo, oddly.

PN1705

THE COMMISSIONER: Yes. It's the last page.

PN1706

THE WITNESS: 1437?

PN1707

MR WILLIAMS: That's what I said, yes, 1437. It is in fact I think literally the last document in the record?---Yes.

PN1708

So that's your notice of dispute?---Yes.

PN1709

Signed by you?---Yes.

PN1710

Do you see the heading, 'Notice of dispute of underpayment'?---Yes.

PN1711

Do you see the date?---Yes, 22 December.

PN1712

So the ink is barely dry on the rollover agreement you've lodged this dispute, wasn't it? It came into operation on 15 November 2022, and on 22 December 2022 you've made this dispute notification?---Yes.

PN1713

And you call it 'Notice of dispute of underpayment'?---Yes.

PN1714

And in this notification you express your view as follows:

PN1715

The union is of the view that the company is in breach of the Armaguard and Transport Worker's Union Queensland Road Crew Enterprise Agreement 2019 and the 2022 agreement.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1716

?---Yes.

PN1717

'By removing the entitlement.' This is the argument that the union makes which is being dealt with in these proceedings, isn't it?---(No audible reply)

PN1718

This is the dispute notification that led to this dispute?---Yes.

PN1719

And this is the first time that TWU had ever said to the company it thought that the 2019, or 2016 agreement for that matter, and the 2022 agreement were being breached?---Sorry, can you please repeat that.

PN1720

This is the first time that the union ever suggested to my client that in fact it was in breach of its enterprise agreements?---After we've done our research, yes.

PN1721

After you've done your research?---Yes.

PN1722

In between the approval of the agreement in November and the lodging of this dispute in December?---Well, that's when we completed our research, yes.

PN1723

I see. Why didn't you make this dispute earlier?---Because I hadn't finished doing my research.

PN1724

What research is this, Mr Wilkinson, what is it?---Sorry, I don't understand that question because I already asked that - - -

PN1725

You said research about 50 times, that you've done research. So what is it, what's the research?---Research on documents. As I've explained before research on documents, current agreements, notes from previous - we had to go through from the 2014 agreement, 2016 agreement, 2019 agreement. We were also doing research on a number of agreements in different states; also finding out from other members and officials in regards the interpretation of wording, and all those different things. That's research.

PN1726

What research were you doing relevant to your accusation against the company that it's in breach of its enterprise agreements?---Interpretating on the 2016 agreement, 2014 agreement, other agreements.

PN1727

Two thousand and fourteen?---Two thousand and fourteen agreement.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1728

Why?---Because I had to have a look at the 2014 agreement to see what wording was in that agreement compared to the 2016 agreement, compared to the 2019 agreement, compared to other agreements in the country branches, in the metro branches agreements. Also in the different states in regards to the wording interpretation in those agreements. All these - all these researchers speaking to members around what they were doing prior to these - from being in different depots to being having a depot at a certain location, being able to come back to the depots for lunch where they could disarm and have a proper free lunch, to go into a super depot. A lot of research in regards to this.

PN1729

Yet in relation to an agreement which had been approved a bit over a month earlier you had made a claim for reinstatement of the benefit of any claim here as an entitlement. You've set it to one side, and then you concluded an agreement. And now you come back to the company and say, well, actually you are in breach by not paying in the first place. Is that the way your union operates, Mr Wilkinson, or is that just you?---Sorry, that's an attack on my character, Commissioner. I don't - I don't think that - - -

PN1730

That's right.

PN1731

THE COMMISSIONER: You can be proud of the way you operate if you wish. That's how you might answer the question?---Commissioner - - -

PN1732

It's not necessarily a slur?---It is in those - in those views, because it's talking about my employment and how I operate. I make sure that I'm thorough before raising a dispute with a business in regards to making sure that any dispute that I raise with any business has merit.

PN1733

Well, there's your answer.

PN1734

MR WILLIAMS: Thank you. And when did you first draw a conclusion that the company was in breach of these enterprise agreements?---Once I raised the dispute.

PN1735

So immediately before 22 December 2022?---It was coming into December or after, yes. So that's why we raised the dispute as per the disputes clause was in the agreement.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1736

Does that mean that we can be confident that prior to that moment, or whenever that was, the TWU had no belief that the company was in breach of its enterprise

agreements?---I didn't say the TWU didn't have any belief that they had no dispute at that point in time. We were doing our research.

PN1737

I thought you just said that you reached the conclusion some time shortly prior to?---We reached our - we reached our conclusion after we've done the research, and that's when we notified our dispute on 22 December 2022.

PN1738

And I'm very comfortable with that response, Mr Wilkinson, but if that's correct then that means that up to that point no one in the TWU had any view that the company was in breach of its enterprise agreements by withdrawing the lunch in truck then?---We had views, and everyone's entitled to their views, but as I - you asked me a question before how I represent myself. I don't come to a conclusion until I've done all my research to form a view in the respects of do I have a claim here or has the company been in a position that don't have a claim. Once I concluded my research I then formed the view that the company was in breach of the 2019 agreement and the 2022 agreement, which then I raised the dispute.

PN1739

Yes. And up to that point that wasn't the TWU's position. That must be right, mustn't it, or you would have raised the dispute earlier?---Once again I refer back to the way I operate as the industry coordinator, is once I concluded my research and formed my view after concluding my research I then formed a view that the company was in dispute - sorry, in breach of the 2019 agreement, 2022 agreement in the respects. That's why I raised a dispute as per the agreement.

PN1740

But I'm right, aren't I, that up to that point nobody in the TWU was suggesting that the company was in breach of its enterprise agreement, because if that had been believed, anyone's belief, anyone in authority, you would have done something about it earlier, wouldn't you?---Once again referring to once I completed my research I then become of the view that the company was in breach of the agreement. I don't come to a view that the company is correct prior to I do my research.

PN1741

And that happened in relatively mid to late December 2022?---Yes.

PN1742

You did say earlier that you had some direction or something from national office related to the ACT/Tasmania outcome?---Yes. They were informing me that they were running a Commission hearing in regards to the lunch in truck provisions.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1743

So what's that got to do with - how does that fit into your thinking and your actions?---So once I explained to my officials, my senior officials, in regards to that I am doing some research in regards around the provision in the respects around what the interpretation, how it come in, was in that clause in those

respects. So to form a view in the respects of that I can't (indistinct) before I've done the research.

PN1744

No, I asked you about the process of the other dispute, the ACT/Tasmania dispute. How did that factor into your thinking and your timing?---Well, they're two different - two different matters. The matter in the ACT and Tasmania was in regards to the company was not directing employees to have lunch in truck to our dispute, which we are here today in the respects of the underpayment of the clause that states very clearly that the employees will be paid a minimum of 15 minutes for the meal break.

PN1745

You do understand the problem that it's just not the way you dealt with the issue up until December 2022. You must understand that it's problematic?---I don't understand that question because I was doing my research.

PN1746

You don't understand the question because you were doing your research. How does the research impact on your understanding of my question?---Once again I don't raise a dispute without making sure that I know everything around what could be in a position around is the company in breach of an agreement or if they're not in breach of an agreement.

PN1747

Let me put a couple of propositions to you and then we will be done. The first proposition is that when you came into the role and throughout your process of assisting the members through consultation when the lunch in truck benefit was withdrawn, and then through the course of preparing the log of claims and coming up with the claim that you came up with, through all of that process no one had suggested to you, and you did not believe, that the company was in breach of its enterprise agreement by withdrawing the lunch in truck benefit?---I hadn't formed a view of that because I haven't done the research.

PN1748

And no one else has suggested to you that that was the case, have they?---The language in the respects that the employees - - -

PN1749

You heard my question, didn't you; no one else had suggested to you that that was the case?---I'm answering your question.

PN1750

Please do?---The language - the language - - -

PN1751

No, no. This is about a communication from someone else to you, it's not about language?---If I can - - -

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1752

No one else had suggested to you that the company was in breach of its enterprise agreements in relation to the withdrawal of the benefit?---So, Commissioner, if I can answer the question. The language that was used from the employees and from the business was around lunch in truck. That actually enacted us to then go and do the research which then once we had completed our research we then spoke to our members here in Queensland to say that very clearly that the agreement that was from 2016, 2019 and 2022 in the respects that there is a provision within that that they would be paid for 15 minutes, for security reasons, as a minimum.

PN1753

Mr Wilkinson, it's such a simple question. Up until your, what you say is the conclusion of your research in the forming of your views in December 2022, nobody in the TWU – a member, a delegate, an organiser – had suggested to you that the company, that they believed the company was in breach of its enterprise agreement by withdrawing lunch in truck?---A number of people have said that they're in breach of it. That's what it made us be in a position to do our research. And then we formed a view that the company was in a position that they were in breach of the paid 15-minute meal break.

PN1754

Mr Wilkinson, if that's what you'd believed you wouldn't have styled the log of claims as reinstatement of a benefit associated with employees spending their lunch break in the truck?---But once again, we were making clarifications through the log of claims positions and we sought that clarification through the business and the clarification from the business sought that as well.

PN1755

I can't do any better than that, Mr Wilkinson. The second proposition is this, that you're the architect of this application. You're the person who decided it should be made. Is that right?---I was of the view when I raised this dispute with the company that they were in breach and we sat down and had a meeting with the company and we had a number of discussions in regards to see if we could raise this dispute at the local level, which we couldn't - - -

PN1756

Are you the architect of this application?---As in - - -

PN1757

Are you the TWU official who decided that this application should be made?---After we couldn't reach - - -

PN1758

No. Are you? Are you?---After we couldn't - - -

PN1759

Are you the person within the TWU who decided this application should be made?---So after - - -

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1760

Or is it someone else?

PN1761

THE COMMISSIONER: No. Let him finish. Thank you?---After we had, as per the agreement, we had the meeting with the business in the respects of the dispute letter, the company in the union could not come to an agreement in respects to the dispute. And, yes, we asked the industrial department to raise this in an F10. Yes.

PN1762

MR WILLIAMS: Well, do you say – well, by 'we' – you signed the letter of the 22 December 2022?---Yes.

PN1763

You appear to be the official in the role for making – with the authority to make disputes of that kind, because you signed the letter. Are you the one who made the decision to make the dispute? Or did somebody else make that decision?---I made the decision after the dispute under consultation of our members.

PN1764

Yes?---In the view that we were, and sorry, the company was in breach of the agreement, and as per the dispute resolution clause, we followed that which leads us here today.

PN1765

So here's a couple of propositions for you, Mr Wilkinson. No one within the TWU in the Queensland Branch, not a delegate, not a member, not another official had any belief expressed to you that the company was actually in breach of the enterprise agreement, by withdrawing the benefit, although they may have been very upset about the fact that they didn't. Do you agree with that or not? And if you don't agree with it tell me and we'll move on?---I don't. I don't agree with that assumption. No.

PN1766

It's not an assumption. It's a question. And you're the only person who can answer it?---Well, to – for us to do the research in regard - - -

PN1767

No. No, no. It's not about your research any more, Mr Wilkinson?---I'm answering your question.

PN1768

It's about other people's views – about your understanding of other people's views and how they expressed them to you?---So if I may answer your question?

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1769

Please do?---The initial raising, once the company was in a position to remove the payment for lunch in truck – yes, members were upset. Yes, were members in a position around that. But we can't, as an official, advise our members until we do

that. Our members have stated to us very clearly that they took it away from them, which enacted us to do the research - - -

PN1770

Well - - -?---- - - which then, in December 2022, come to the conclusion that the company was in breach of the 2019 agreement and 2022 agreement.

PN1771

After a year and a half of research?---There was a lot of information to go through.

PN1772

I see?---Yes.

PN1773

Well I've made my proposition. You've, I think, disagreed with it. The second proposition is that at no stage through the negotiation for the 2022 rollover agreement did you, or anyone else at the TWU suggest to the company that it was in breach of its enterprise agreement and that the benefit was, in fact, still paid?---Once again we're in a position that we were doing our research. We just - - -

PN1774

No, no?---If you can let me answer my question? We had a number of conversations through the enterprise - - -

PN1775

Are you able to - - -?---Through the enterprise agreement so the lunch in truck payment, as per our log of claims. Sorry, our paid meal break, as per our log of claims was in pursuant that our members weren't very clear to have a proper meal break through that position. I cannot – being the position – and say to the company that we believe you're in breach without going through the proper research. Because if I believed that they weren't in breach of the enterprise agreement the dispute wouldn't be raised. But at the end of the day I do believe that the company is in breach of the 15 minutes paid meal break and that's where we are here today.

PN1776

After – and then – you took the claim up in the negotiation?---Yes.

PN1777

And we won't argue – well, you don't need to argue but it was a simple fact that it was not agreed that the benefit would be reinstated from the negotiation in 2022?---The company rejected the claim.

PN1778

And it wasn't agreed?---The company – the company rejected the claim.

*** JAMES ROBERT WILKINSON

XXN MR WILLIAMS

PN1779

That's right. And then, shortly afterwards, you've sent them this dispute notification. 22 December 2022. And my suggestion to you is this, Mr Wilkinson. You, yourself, don't have any genuine belief that the company is in breach. You have just decided to have a crack and see what the Commission will say in relation to a clause which is undeniably difficult to read. That's really what's happening, isn't it?---No. My understanding after I had done the research in the respects of around what this dispute come from was the company, as per the provision, was in the agreement that the company, if they're not directing, but it also states in dot point three was in that for the part of the meal break prescribed above, the employees would be paid at the rate of time and a half for a minimum of 15 minutes, for security reasons. That's the basis of our dispute. And as we go through the position of our research, I am not arguing in regards to the company taking away the provision that they're not directing employees to have lunch in the truck. We're arguing the position around that dot point, where the company states very clearly, within its agreements from 2016, that they would pay a minimum of 15 minutes. That is what the basis of the dispute is.

PN1780

And the final proposition. If it's true – if it be true that you have a genuine belief that there is a breach of the enterprise agreement, it's a belief that you formed after the 2022 enterprise agreement was approved and operational?---After I finished and completed my research, yes. Because I can't raise the dispute prior to doing my research.

PN1781

That's all I have for the witness.

PN1782

THE COMMISSIONER: Well, thank you for the questions. Anything arising, Ms Dalton-Bridges?

RE-EXAMINATION BY MS DALTON-BRIDGES

[11.29 AM]

PN1783

MS DALTON-BRIDGES: Mr Wilkinson, you were taken to a document, page 606, which are the minutes of the company. And it was attached to like the statement? Sorry, 608?---Yes.

PN1784

Was the company in the habit of showing you the minutes or getting you to confirm the minutes of the meeting?---We confirmed – we kept our own minutes.

PN1785

So we didn't – you didn't confirm the minutes of their meeting or this via their mechanisms?---No.

PN1786

So they could write anything in their minutes?---Yes.

*** JAMES ROBERT WILKINSON

RXN MS DALTON-BRIDGES

PN1787

In terms of and much has been made about the parking of issues, or putting an issue aside?---Yes.

PN1788

Can you explain to us what putting an issue aside or parking an issue is? And how that is different to withdrawing an issue?---So the way I operate when we park an item or put an item to the side that we bring these discussions. Obviously, there will be a lot of discussions, and that we would have through the negotiations, in the respects on what it is. And at times the length of meetings and the timeframe that we had meetings we couldn't get through all of that. We generally try to get through items that we can agree on before we get to the items.

PN1789

THE COMMISSIONER: Sorry, to just interrupt. Who keeps the minutes from the TWU side?---We all write our own minutes. I keep minutes.

PN1790

You haven't produced your minutes of the 20 July meeting?---No.

PN1791

Well, I'll call for production of those?---Yes.

PN1792

Thank you. Thanks, Ms Dalton-Bridges.

PN1793

MS DALTON-BRIDGES: In regard to understanding the parking of those issues, can you explain how Armaguard, the respondents, felt about the paid meal break issue where they proposed the rollover agreement to us?---Their view was very simply – it was we keep the document as it stands and we just rollover the agreement. Because, as they explained to me that their view was that they didn't have to pay because they're not directing to have the employees have lunch in truck.

PN1794

Have we expressed to them that we had a different view to them?---We had a number of conversations with the business in the respects that the employees weren't free and clear to have a proper meal break in those respects. And that's what it was - a number of conversations were about.

PN1795

So it would be reasonable, Mr Wilkinson, what you have described to us because I don't want to lead you. Would it be reasonable – could you describe to us how the company felt and how we felt? Or you felt, representing the TWU about the meal break provision as the company proposed the rollover agreement to us?---I'm sorry. Can you - - -

PN1796

Sorry. I wasn't clear?---Yes.

*** JAMES ROBERT WILKINSON

RXN MS DALTON-BRIDGES

PN1797

So when they were proposing the rollover agreement to us, how did they think we felt about the meal break provision? And how did they feel about the meal break provisions? What did they think was the status quo - - -

PN1798

THE COMMISSIONER: Not what did you 'think'. What was said? How do we possibly know what was thought - - -

PN1799

MS DALTON-BRIDGES: Well, what was said?---I was – I was - - -

PN1800

Sorry. What it was?---Yes. So the company after our five days' industrial action, the company approached the union wanting to sort an agreement. They put a proposal to the union. Once again we went out and spoke to our members in regards to the proposal and that was clear. The members agreed that it was a short agreement that expired on 15 August 2023, that they would accept the agreement as a rollover at that point in time.

PN1801

Was there anything specifically said, though, about the meal break payments from us or from the respondent?---Not to my knowledge in the respects of where we sat with that.

PN1802

THE COMMISSIONER: I asked that earlier. You've got the same answer.

PN1803

MS DALTON-BRIDGES: So just trying to get a better or a clearer – because I understand the Commissioner has asked this question and I think there is a clearer answer there that we just haven't got to. In terms of how the company understood the parking of the provision. Can you explain that to us a little more? So how did they understand, going forward, we would deal with the issues that were parked?

PN1804

MR WILLIAMS: As long as it's – the answer is focused on what the company said I don't have an objection. But I think the issue about what the company - - -

PN1805

THE COMMISSIONER: Was anything said to you about this issue? I've already asked you whether you entertained it. Did the company say anything to you about the issue?---After. After the five days' industrial action, Commissioner, no.

PN1806

Right?---They come back with an offer of a rollover and as a rollover and agreement.

*** JAMES ROBERT WILKINSON

RXN MS DALTON-BRIDGES

PN1807

MS DALTON-BRIDGES: So nothing was said about issues that had been parked that still had to be dealt with?---No.

PN1808

Right. Okay. Just further as to the authority for running an issue, can you explain when you want to escalate an issue within the TWU whose authority you need?---As in which respects? As a local level or to - - -

PN1809

Well for us to lodge something?---Yes.

PN1810

For instance within the Commission?---Yes.

PN1811

Where would we need to take that?---So we would need to take that, for myself, I would initially raise the dispute formally with the company. If we cannot resolve that dispute it would then be lodged to the industrial department for them to have it approved through our process internally. We have everything on document in respects of filing an F10. And the industrial department then would be in a position to have that approved by the branch secretary.

PN1812

All right. Thanks, Mr Wilkinson.

PN1813

THE COMMISSIONER: Right, thanks Mr Wilkinson. You're now excused from giving evidence. Thank you?---Thank you, Commissioner.

<THE WITNESS WITHDREW

[11.36 AM]

PN1814

THE COMMISSIONER: Anybody require a convenience break?

PN1815

MR WILLIAMS: Probably a good idea, Commissioner. Thank you very much.

PN1816

THE COMMISSIONER: All right. We'll come back in at 11.45. Thank you.

PN1817

MR WILLIAMS: Thank you.

SHORT ADJOURNMENT

[11.36 AM]

RESUMED

[11.49 AM]

PN1818

MR WILLIAMS: Thanks, Commissioner. My first witness is Mr Anthony Zagari to be called.

*** JAMES ROBERT WILKINSON

RXN MS DALTON-BRIDGES

PN1819

THE COMMISSIONER: All right. Thank you.

PN1820

THE ASSOCIATE: Thank you, Mr Zagari. Could you please state your full name and address?

PN1821

MR ZAGARI: Yes. Anthony John Zagari, (address supplied).

<ANTHONY JOHN ZAGARI, SWORN [11.50 AM]

EXAMINATION-IN-CHIEF BY MR WILLIAMS [11.50 AM]

PN1822

MR WILLIAMS: Mr Zagari, for the record would you state your full name, please?---Yes. Anthony John Zagari.

PN1823

Thank you. And Mr Zagari, you're employed by Linfox Armaguard Pty Ltd?---Correct.

PN1824

And your role is Head of Security?---Correct.

PN1825

Yes. And you've made a statement relevant to the matters before the Commission today?---Yes.

PN1826

Do you have a copy of that statement with you?---Yes, I do.

PN1827

And Mr Zagari, you have drawn my attention to two modifications you want to make – minor modifications. So can I direct your attention to paragraph 40 of your statement?---Yes.

PN1828

Is there a typographical error or is there an error in paragraph 40?---Yes. It's very minor. Just in paragraph 40, midway through the sentence beginning, 'Once the emergency/duress button at a branch is pressed'. And just the mention of a 'branch' should say 'fleet' or 'vehicle'.

PN1829

So, 'Duress button at a fleet or vehicle'? Or just at a 'vehicle'?---Vehicle.

PN1830

At a vehicle?---Correct.

*** ANTHONY JOHN ZAGARI

XN MR WILLIAMS

PN1831

So we replace the word 'branch' with 'vehicle'?---Correct.

PN1832

Thank you. And over the page, paragraph 45, is there a similar amendment or a different amendment you want to make to that paragraph?---Yes, there is. Paragraph 45, the sentence beginning, again, halfway through the paragraph, 'The New South Wales incident involved an armed robbery of a road crew after they made a collection.'

PN1833

Yes?---Just a typo from 'after' to 'before'. So it was, 'Before the collection'.

PN1834

So, once again, we just cross out the word 'after' and we replace it with the word 'before'?---Correct.

PN1835

All right. Thanks Mr Zagari. Subject to that are the matters set out in the statement true to the best of your knowledge and belief?---Yes, they are.

PN1836

And to the extent there are opinions expressed, I think there are a few, they are opinions you genuinely hold based on your experience?---Yes.

PN1837

Thank you. Commissioner, I think the practise hasn't been to tender them individually so I am not - - -

PN1838

THE COMMISSIONER: No, we're not. Ms Dalton-Bridges or Ms Nguyen any objections to any of the evidence?

PN1839

MS DALTON-BRIDGES: No, Commissioner.

PN1840

THE COMMISSIONER: All right. Thank you. It will be included in the court book. And you will be asked questions in cross-examination now.

CROSS-EXAMINATION BY MS NGUYEN

[11.53 AM]

PN1841

MS NGUYEN: Thanks, Mr Zagari. My name is Phuong. I am just going to be asking you some questions about matters raised in your statement. If at any stage I go too fast feel free to tell me to slow down?---Thank you. Good morning.

PN1842

And I understand your - - -

*** ANTHONY JOHN ZAGARI

XXN MS NGUYEN

PN1843

THE COMMISSIONER: It's Ms Nguyen, isn't it?

PN1844

MS NGUYEN: Ms Nguyen.

PN1845

THE COMMISSIONER: Yes, I think it's best if we keep to that. Thank you.

PN1846

MS NGUYEN: Now, I understand you're head of security for Linfox Armaguard?---Correct.

PN1847

Okay. You're not involved in any negotiations for enterprise agreements at all, are you?---No. I'm not.

PN1848

Sure. All right. I just wanted to take you, firstly, to paragraph 13 of your statement?---Yes.

PN1849

So there you say that the company that's heavily in safety and secure protections to ensure that crew members are safe and secure during their shift. Is that correct?---Yes.

PN1850

Yes. And that includes the provision of training and equipment?---Yes.

PN1851

Yes. Sure. So going then on to paragraphs 14 to 15. So these measures that are provided they're compliant with the ASIAL/CIT Code of Practice?---Yes.

PN1852

Yes. And that includes providing crew members with hand-held EGIS unit and firearm?---Correct.

PN1853

Correct. Okay. If we could then go to paragraph 42 of your statement? And this is in particular reference to the EGIS units that crew members are given. So one of the purposes, from what I understand, is that you use this device to report duress or suspicious or criminal activity to the AMC?---Correct.

PN1854

Yes. So that's something you mention at paragraph 43, I believe, in your statement?---Yes.

PN1855

Yes. And so those units they're expected to remain on the persons of crew members, including during their meal breaks. Is that right?---Absolutely.

*** ANTHONY JOHN ZAGARI

XXN MS NGUYEN

PN1856

Yes. Sure. And so if it's – one of the purposes is to report duress or suspicious or criminal activity in order to do that there's an expectation that crew members have to remain aware of their surroundings and be vigilant. Is that right?---I would expect so.

PN1857

Yes. And, of course, crew members are provided with training on how to use these devices properly?---Yes, they are.

PN1858

Thanks, great. Now, if I could just go back to paragraph 17 of your statement? Now, you mention there that before crew members undergo – sorry, before members commence their duties they undergo extensive security training?---Sorry, at paragraph 17 did you say?

PN1859

Yes. Paragraph 17?---Yes.

PN1860

Yes. Okay. And then at paragraphs 18 to 19 you then further describe how the crew members they receive annual requalification training in firearms?---Yes.

PN1861

Yes. And that's across all States and Territories?---Yes.

PN1862

And so in receiving this training of course it's expected that they have to remember this training. They can't exactly go – well, I don't need that anymore do I? It's expected well when they're out in the field they have to remember it and they have to utilise it in case a risk arises. Is that correct?---Correct.

PN1863

Sure. And now I also notice at paragraph 35 of your statement, with particular reference to use of firearms. So you described how the firearm is not to be removed from a holster during the shift except in limited circumstances. And those circumstances include when innocent persons are not in danger by the road crew member and knowing then as a last resort. And then only in reasonable self-defence or defence of another person where there is a real pending threat to life in order to stop that real and impending threat to life?---Yes.

PN1864

Is that correct?---Correct.

PN1865

So it seems that the provision of the firearms is not just for protection of property is it?---For property? No.

PN1866

For property?---No.

*** ANTHONY JOHN ZAGARI

XXN MS NGUYEN

PN1867

No. Can I then go to paragraphs 46 to 47 of your statement?---Yes.

PN1868

So you describe there has been a downward trend in successful attacks on road crew?---Correct.

PN1869

And there's a graph there at paragraph 46 - - - ?---Correct.

PN1870

- - - to demonstrate that. At paragraph 48 you describe that you're not aware of any unsuccessful attacks at - - - ?---Not that I'm aware of.

PN1871

Sure. Are instances or reports of unsuccessful attacks are they recorded in any way by the company? Do you know?---Yes. In the security section we record all instance of suspicious activity or attacks. It's electronically recorded. Correct.

PN1872

Okay. For sure. But would you agree that whether an attack is ultimately successful or unsuccessful in either of and in those instances somebody has approached a crew member. And probably not with positive intentions in mind?---Yes.

PN1873

Yes. And in that situation then, of course, crew members would be expected to remember their training?---Correct.

PN1874

Yes. So you would agree then that crew members they cannot become complacent. They can't let down their guard completely during their shift?---It's what I would describe as situational awareness.

PN1875

Okay. And this would be included in during their breaks?---Correct.

PN1876

Yes. And it's safe to say that because while security risks maybe lower and they should never assume that it's zero?---Correct.

PN1877

That's all the questions I have. Thank you?---Thank you.

PN1878

THE COMMISSIONER: Thanks, Ms Nguyen. Anything arising?

PN1879

MR WILLIAMS: I have no re-examination, Commissioner. Unless you've got a question of course.

*** ANTHONY JOHN ZAGARI

XXN MS NGUYEN

PN1880

THE COMMISSIONER: No. I don't have any questions. Thanks, Mr Zagari. You're free to leave?---Thank you.

PN1881

Thank you.

<THE WITNESS WITHDREW

[11.59 AM]

PN1882

MR WILLIAMS: Commissioner, I call Mr Narishen Naidoo. He's going to join us by video. He doesn't have a copy of the digital court book and I don't know if he's going to need it but if he does Mr Gleeson tells me that he can share it. He joins the link himself and apparently shares it if it's required. But he doesn't have it with him. I'm told he's logging in now, Commissioner.

PN1883

THE COMMISSIONER: Thank you.

PN1884

THE ASSOCIATE: Thank you, Mr Naidoo. Can you hear me?

PN1885

MR NAIDOO: Yes, I can.

PN1886

THE ASSOCIATE: Thank you. I will just take an oath on affirmation but before I do could you please state your full name and address?

PN1887

MR NAIDOO: Yes. It's Narishen Naidoo. And my address is (address supplied).

<NARISHEN NAIDOO, AFFIRMED

[12.00 PM]

EXAMINATION-IN-CHIEF BY MR WILLIAMS

[12.00 PM]

PN1888

THE COMMISSIONER: Thanks, Mr Naidoo. It's Commissioner Hunt here. You probably can't see me but you can see the Bar table? Or you can see me now?---I can see you now.

PN1889

Thank you. I may interject, I may ask questions et cetera, but otherwise you will be asked by Mr Williams to go through your witness statement. Then you will be asked questions in cross-examination by Ms Nguyen and we'll see whether I ask questions. Okay? Right, thank you.

PN1890

MR WILLIAMS: Thank you, Commissioner. Mr Naidoo, I take it you can hear me okay?---Yes, I can.

*** NARISHEN NAIDOO

XN MR WILLIAMS

PN1891

My name is Dan Williams and I am the advocate for Linfox Armaguard. Could you state your full name for the record, please?---It's Narishen Naidoo.

PN1892

Thank you. And Mr Naidoo, you've made a statement relevant to the matters before the Commission?---Yes, I have.

PN1893

Do you have a copy of that statement with you?---Yes, I do.

PN1894

And, Mr Naidoo, in paragraph two do you record that you're employed by Linfox Armguard Pty Ltd as head of Cash in Transit Operations. Does that remain your role?---No, it does not. So I actually moved on to Linfox Intermodal.

PN1895

Yes?---As from 3 July this year.

PN1896

And what's your role with Linfox Intermodal?---I'm the general manager of operations.

PN1897

All right. And just so the record is clear, are you still employed by Linfox Armaguard? Or are you employed by a different Linfox company now?---I'm employed by a different Linfox company now.

PN1898

Are you able to identify your employer?---Yes. It's Linfox Pty Ltd, Head of Operations for the Intermodal part of that business.

PN1899

Okay. But you're still with the Linfox group?---Yes.

PN1900

Yes. All right. And Mr Naidoo with that correction in relation to your current role, are the matters of fact set out in your statement correct to the best of your knowledge and belief?---Yes, it is.

PN1901

And to the extent you express opinions in this statement do you hold those opinions based on your experience genuinely?---Yes, I do.

PN1902

Thank you. They're all the questions from Mr Naidoo. You will now be asked questions by the advocate for the TWU and possibly the Commissioner?---Sure.

CROSS-EXAMINATION BY MS NGUYEN

[12.03 PM]

*** NARISHEN NAIDOO

XXN MS NGUYEN

PN1903

MS NGUYEN: Hi, Mr Naidoo. Can you hear me?---Yes, I can.

PN1904

Hi. My name is Ms Nguyen. I'm from the TWU. I am just going to ask you a few questions about some of the matters raised in your statement?---Yes.

PN1905

Can I first take you to paragraphs 16 to 18 of your witness statement?---Yes.

PN1906

So there from what I understand you speak to your experience of attacks in the CIT industry, generally. And then in paragraphs 17 to 18 about attacks that occur in South Africa. Is that right?---Attacks, yes.

PN1907

Yes. And speak particularly about how attacks in armoured vehicles are more common in South Africa?---Yes.

PN1908

So it's fair to say that the experience in South Africa is quite different to the Australian experience. Is that right?---Yes, yes, it is.

PN1909

Yes, for sure. Would it be fair to say then, it wouldn't be that relevant I guess to the experiences of the Queensland road crew?---No, I think it was more alluding to the fact that I am experienced when it comes to robberies, armed robbery attacks in the industry itself. And that relative to my experience I opionate that just how – how risky or risk adverse the business needs to be with regards to the decisions it makes relative to the Queensland road crew.

PN1910

Okay. But the Queensland road crew they wouldn't necessarily have the same experience as, I guess the South African experience?---No.

PN1911

Yes?---No, no.

PN1912

Okay?---Yes, there aren't any attacks (indistinct) that I have – I came across in Queensland in my time with Armaguard. Yes.

PN1913

Okay. Yes. And so can I also take you to paragraphs 30 to 32 of your witness statement?---Yes.

*** NARISHEN NAIDOO

XXN MS NGUYEN

PN1914

So there, for my next one, you describe how crew members, they have to stay on a planned route that's provided by at the company's daily run sheet. And that is

unless they communicate a change to the FMC Control Tower. Is that right?---Yes.

PN1915

Yes?---And so, in order to do that, they have to remain in regular contact with FMC Control Tower?---Yes.

PN1916

Yes, okay. Great. So for instance, where crew members can take their lunch, so it's dependent on the planned route for the day, is that right?---Yes.

PN1917

Yes, okay?---Oh – yes, so – so lunch were exactly routed in but if they wanted to defer that lunch break or take it earlier then that's something they would need to call out to the Control.

PN1918

Okay. So they couldn't really take lunch at a place of their own choosing if it means deviating from that planned route. Is that right?---No, so the lunch break is just to time slots. So just allocates it at this point in time to - through the course of the day. You have 30 minutes to take your meal break and as to where they chose to take it, that was purely up to them.

PN1919

But if it means going off of the planned route for the day, they couldn't really do that?---Well, they could so long as they went back on to the planned route within that 30 minutes.

PN1920

Yes. Now, if I can take you to paragraph 43 of your statement?---Yes.

PN1921

Now, from what I understand, in this paragraph you're referring to a feedback that was provided by crew members in a series of two of those meetings between 14-16 July 2021?---Yes.

PN1922

Yes. And so this is following a proposal from the company to not require lunch to be taken inside the vehicle and then from what I understand you're describing 39 now on 8 July, there were a series of letters sent out to the TWU?---Yes.

PN1923

Yes, okay. Great. And so this feedback process – this was rolled out across the country at the same time?---Yes, it was.

PN1924

Okay?---It was – we were (indistinct).

*** NARISHEN NAIDOO

XXN MS NGUYEN

PN1925

Okay. Sure. So is it the case that the company I guess conducted this process around the same time across all the states and territories? Is it because the company was of the understanding that all the states and territories had the same lunch in truck allowance or payment?---Yes, it was of the understanding that all states are in territories of (indistinct) that were lunch in truck, yes.

PN1926

So all the discussions that took place, thereafter, that – it proceeded on that understanding? On that basis, is that right?---Yes and it was done on a national base.

PN1927

Yes. Okay. All right. Looking particularly when you did the feedback process with the Queensland road crew, would it be fair to say that a majority of the ones that you spoke to, they're probably not involved in negotiations for Enterprise Agreements. Is that right?---Yes, so (indistinct) staff are involved in the negotiations. There's just the (indistinct) that would be. And they're going to be part of the (indistinct) when the (indistinct) were conducted.

PN1928

Sorry, could you repeat that? You did break up a little bit?---Oh, yes, I was saying, not all employees are involved in the negotiations. Only generally the delegates are involved in the direct (indistinct) sitting of the negotiations. But equally, whatever the outcome is, prior to it being agreed on, it is published and everyone gets the opportunity to (indistinct).

PN1929

Okay, great. But they're not really involved on an intimate level in terms of drafting, like words and that type of thing?---No.

PN1930

No, okay. If I could take you to some of the pieces of feedback that you have got set out there in paragraph 43, now, in paragraph 44, sorry, you say that some of the feedback related to safety and security matters. Is that right?---Yes, the predominantly it related to payments but there were some (indistinct) around safety and security. Yes.

PN1931

Okay. So if you can – sir, if we jump down to paragraph 43, which is on page 1350?---Yes. Found that.

PN1932

Yes, from Rockhampton?---(Indistinct). Yes.

PN1933

So you see there at (g) we have got someone has said that, 'Lunch breaks are not paid breaks. Being unpaid (indistinct) not on duty as per Queensland licenses that means that we should not carry a weapon. Please explain this.' Do you see that one?---Yes. Yes.

*** NARISHEN NAIDOO

XXN MS NGUYEN

PN1934

And then we have also got at (j). (J) says, 'All well and good, however, having lunch in malls with a weapon makes us vulnerable'?---Yes.

PN1935

Yes, do you see that one?---Yes.

PN1936

You have also got things like, 'Please provide details at' - (l) – sorry, 'Please provide details on where we can take lunch as in another area. The crew were asked to leave the site during lunch due to carrying a weapon'?---Yes.

PN1937

Do you see that one?---Yes.

PN1938

Yes, okay. And then if we go down to paragraph 4 to some of the Brisbane feedback, we have got the half hour, at (a), 'We have got the half hour of an unpaid break, this means this is my time theoretically, I should be able to do whatever I want to do in that half hour, however I am still restricted to what I can do. Can't go and cut my hair in a half hour as I have a firearm on me. In other words, a half hour is still on AG terms and conditions, this is theoretically not my time despite being unpaid'. Do you see that one at (a)?---Yes. Yes. Noted.

PN1939

Sorry, what was that?---I said I note it. Yes. I can see it.

PN1940

Okay. Great. We also say at number (c) on the next page, 'Am I illegally carrying firearm for the unpaid half hour, meaning that if somebody tried to attack us or that we are trying to rob them or think I am carrying cash. Where I am carrying my cooler box or lunch box with my lunch in it, am I allowed to draw my firearm and protect myself?' You see that at (c)?---Yes, I see it.

PN1941

And then again at (h), 'Will there be any restrictions on what we can and can't do during our breaks? Our own unpaid time?' Yes. You see that one?---Yes, I do.

PN1942

So these are concerns that the crew – that some of the crew members raised because the company proposed to stop a payment that they had received it's fair to say?---Yes.

*** NARISHEN NAIDOO

XXN MS NGUYEN

PN1943

Yes, okay. Would it be fair to say that they raise this concerns because the company was removing a payment which they thought was to compensate for these concerns?---Yes, look, I believe they raised their concerns predominantly for a couple of reasons and I would say from a weighty point, probably 60-70 per cent of it related to not being paid anymore. And then the balance with regards to safety and security.

PN1944

Yes?---Yes.

PN1945

But it seems that they were concerned about not being paid for this because there were security and safety concerns that they'd had. Is that right?---Well, I am not too sure how payment will solve the security and safety concerns.

PN1946

Okay, sure. Have you taken a look at the provisions in the Enterprise Agreement that relate to the road crew?---I have seen them previously. I don't have a copy in front of me, but, yes.

PN1947

Sure. Would it be easier for you to get a copy in front of you?

PN1948

MR WILLIAMS: I am sure if we know what the - - -?---Yes, which one you ask I can probably get it - - -

PN1949

THE COMMISSIONER: Sorry, Ms Nguyen, are you asking him to look at the terms of the 2022 agreement?

PN1950

MS NGUYEN: I think what might be easiest is if he has a copy of access to the digital court book. To take him to Annexure 2 of Dan Jones' statement which sets out all of these provisions.

PN1951

MR WILLIAMS: Mr Gleeson assures me we can do that. If he just shares his screen and Mr Gleeson is in the conversation I think.

PN1952

THE COMMISSIONER: Yes. So do we know what page?

PN1953

MS NGUYEN: So it's actually DJ7.

PN1954

THE COMMISSIONER: So from about 993, but we want to get to Queensland, don't we?

PN1955

MS NGUYEN: Yes. Okay, so it starts at 1011 of the digital court book. All right. Do you want to go to page 1014. Okay, do you maybe want to scroll down a little bit and we will look at the wording for the 2015 agreement.

*** NARISHEN NAIDOO

XXN MS NGUYEN

PN1956

THE COMMISSIONER: Are we doing metro or country? We're doing metro, aren't we?

PN1957

MS NGUYEN: Metro. Can you see it there, Mr Naidoo?---Yes, I can see it, yes.

PN1958

Okay. Wonderful. So you can sort of see in the column under the heading '32 meal breaks', we have got, '32.1 Arrange for a meal break. 32.1.1 Each employee is allowed an unpaid break of 30 minutes'?---Yes.

PN1959

32.1.2 And then it talks about the obligation to pay ordinary time in addition to weekly or other wages under this clause, it's not cumulative. And then if we go to the column next to it, there's a specific heading there that says, '32.2 Break inside an armoured vehicle'?---Yes.

PN1960

And then 32.2.1 talks specifically about how, 'Where an employee is required to remain inside an armoured vehicle at the direction of Armaguard for security reasons for part of the meal break, the employee will be paid at the rate of time and a half for the time spent inside the vehicle.' And then 32.2, it goes on to say about how, 'If they are required to spend time in the vehicle, they are paid a minimum of 15 minutes at time and a half and then accordingly employees working a three person crew will be entitled to a 45 minute break and then lastly, 32.2.3, if an employee is requested to work through the meal break, they must be paid at the rate of double time until the commencement of the break'?---Yes.

PN1961

If you want to scroll down a little bit further, to page 1015. You can see then, that the provisions for the Country Branches Road Crew Agreement appears to largely be the same, wouldn't you say?---Yes, clear to me, yes.

PN1962

Okay. Sure. And then if we want to scroll back up to page 1014, we get to the 2016, this is the Country Branches Agreement where we see then that there is a change in the wording. Would you agree?---Yes, to me? Yes.

PN1963

In the sense that if we go now to 32.1.4 it now describes how 'Part of the meal break for the meal' – 'For part of the meal break described above, employees will be paid for a minimum of 15 minutes for security reasons at the following rates'. And then it just talks about how some rates will reduce over time. And then it seems that underneath that is 32.1.5. That seems to be the clause, that used to be at the bottom of all the provisions and that seems to have been moved up top to there, is that right?---Yes. (Indistinct). Yes.

*** NARISHEN NAIDOO

XXN MS NGUYEN

PN1964

The heading that talks about rates inside armoured vehicles seems to have now gone, is that right?---It appears to be.

PN1965

Yes. And then 32.1.6 retains the provision only about 'If an employee is required to remain inside an armoured vehicle for longer than 15 minutes.' Is that right?---Yes.

PN1966

Yes. Great. So the bit that it talks about in 32.1.4 'Where part of the meal break described above, employees will be paid for a minimum of 15 minutes for security reasons'. That doesn't appear next to the words about having to be in the truck anymore, is it?---No, that's not there. Yes.

PN1967

Okay. Would it be fair to say that there's probably a reason?

PN1968

MR WILLIAMS: Well, I object?---Yes?

PN1969

I am happy to see where this goes, but it appears to be questions which go to the issue, the issue before the Commission. It's a legal question.

PN1970

THE COMMISSIONER: Well, if Mr Naidoo doesn't know, he can just simply answer, 'I don't know'.

PN1971

MR WILLIAMS: Well, of course, Commissioner but I suppose it's a question - -
-

PN1972

THE COMMISSIONER: All right. Do you have any knowledge, Mr Naidoo?---No, Madam Commissioner. I was not involved in that negotiation, so no.

PN1973

Very good.

PN1974

MS NGUYEN: Would you see how, if there is a change in the wording, where the payment is now for security reasons and the company has now proposed to take it away?

PN1975

MR WILLIAMS: I do object because it calls for a legal conclusion in relation to a matter which has a whole lot of complexity around it. Mr Naidoo is not qualified to answer the question.

PN1976

THE COMMISSIONER: Well, he can answer he doesn't know.

*** NARISHEN NAIDOO

XXN MS NGUYEN

PN1977

What do you mean 'take it away', Ms Nguyen?

PN1978

MS NGUYEN: Well, at this point - - -

PN1979

THE COMMISSIONER: We know the heading's gone, the 32.3, and we're still talking about the country agreement. I'm not sure why, but anyway.

PN1980

MS NGUYEN: Sorry. If I could probably then just scroll above that, and we go to the 2016 metropolitan agreement. It would appear then, at 32.1.4, quite similar to the Queensland 2016 Queensland country agreement, it says that, 'Employees will be paid at the rate of time and a half for a minimum of 15 minutes, for security reasons', is that right?---That's what it is, yes.

PN1981

Yes, for sure. So, again, in that paragraph, it no longer appears next to the words about having to appear, about having to take lunch in the vehicle, is that right?---Yes.

PN1982

Then if you want to scroll up again, so we can see then that we're now up to the 2019 agreement?---Yes.

PN1983

And can we see for 34.1.1, 'For part of the meal break proscribed above employees will be paid at the rate of time and a half for a minimum 15 minutes, for security reasons'. So, again, quite similar to the 2016 agreements, is that right?---Yes.

PN1984

That in the sense that the words 'for security reasons' are next to the reply about the taking the 'lunch in truck', is that right?---All I can comment on is what I see, those are the words in front of me. As to why those are the words I have no comment.

PN1985

Yes, but you can see that that's there?---Yes, correct.

PN1986

Then we got up to 2022. Again, it's quite similar, 34.1.1?---It should be identical, yes.

PN1987

Yes, it's pretty identical, isn't it?---(Audio malfunction).

*** NARISHEN NAIDOO

XXN MS NGUYEN

PN1988

So it seems that before 2016 it was written one way, where the words 'security reasons' were anchored towards the words about being in the truck for lunch?---Yes.

PN1989

But after 2016 there's not - - -?---The words are not - yes.

PN1990

- - - the words are not anywhere?---The only thing I can comment on that is I was not party to all the prior agreements, negotiations, but I was party to the 2022 agreement and I have mentioned in my statement that one of the log items that the union did put forward was 'lunch in truck'. So they - as much as the words may not be evident on the agreement itself the delegates, the union and the staff all referenced that allowance as 'lunch in truck'.

PN1991

Okay. So we skip then forward thought to 14 to 16 July where this is after the company has made a proposal to remove a payment?---Yes.

PN1992

Which the company was of the understanding that it was about being 'lunch in truck'?---Yes.

PN1993

But yet we have, in the feedback process, in paragraph 43, we have crew members raising concerns not only just about being in the truck, well, now that they're being directed to be outside of the truck, there's still the security and safety concerns that they have, is that right?---That was part of the initial feedback that I consulted on, yes.

PN1994

Yes, so they did raise some of those. So the company has proposed to remove the payment, they say, 'Well, what about these concerns?', so it would be pretty logical or it would be pretty plausible to say that some of the crew members thought that that payment was not just for about being in the truck but it's about the security concerns that they have, is that right?---Yes.

PN1995

Now, at paragraph 48 of your statement, so you recall that there's been no issues that have arisen with respect to crew members eating their lunch outside of the vehicle since 9 August 2021?---Yes.

PN1996

Does this mean that they no longer have to carry their firearms?---No, they still do carry their firearms.

*** NARISHEN NAIDOO

XXN MS NGUYEN

PN1997

So this means that, for instance, they would still have to maintain pretty good awareness of their surroundings and remember their training?---They always have to maintain that, that's not in (indistinct) for their firearm licence, yes.

PN1998

Now at paragraphs 50 to 52, so you describe that you're involved in the bargaining for the 2022 agreement but, of course, we have just been told you weren't involved for bargaining for the 2016 or 2019 agreements, is that right?---That's right, yes.

PN1999

I have no further questions, thank you.

PN2000

MR WILLIAMS: There's nothing from me, Commissioner.

PN2001

THE COMMISSIONER: All right, thanks, Mr Naidoo, that's the extent of your evidence, you're free to leave now, thank you?---Thank you, Commissioner.

<THE WITNESS WITHDREW

[12.25 PM]

PN2002

MR WILLIAMS: I call Kobie Smit.

PN2003

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

PN2004

MR SMIT: It's Kobie Smit, (address supplied).

<KOBIE SMIT, SWORN

[12.27 PM]

EXAMINATION-IN-CHIEF BY MR WILLIAMS

[12.27 PM]

PN2005

MR WILLIAMS: Mr Smit, could you please, again, give your full name, for the record?---Kobie Smit.

PN2006

Thank you. Mr Smit, you're employed by Linfox Armaguard as the cash in transit operations lead, for Queensland and Northern Territory?---That's correct. At the moment my title has changed with a secondment at the moment.

PN2007

Just explain that to the Commission so we've got a - - -?---So it's a secondment, Mr Narishen Naidoo resigned and they seconded me into that role while they're looking for an alternative person for the role.

PN2008

So what's the seconded role that you're in now then?---National CIT operations manager.

*** KOBIE SMIT

XN MR WILLIAMS

PN2009

I see. At the time - sorry, have you made a statement in connection with these proceedings?---Yes, I have.

PN2010

Do you have a copy of that statement there?---Yes, I have.

PN2011

At the time you made the statement were you in the role of CIT operations lead Queensland and Northern Territory?---That's correct, yes.

PN2012

Thank you. Mr Smit, in paragraph 6 of your statement, paragraph (d), you recall that you've read some witness material, including a witness statement of Mr Stephen Hurndell, that's correct?---Yes.

PN2013

Over on paragraph 41 of your statement you've made a comment in relation to something Mr Hurndell has said in his statement. Upon reflection, is there a change you want to make to that paragraph?---Yes, there is. Paragraph 21 of Hurndell's statement, Mr Hurndell states that Linfox Armaguard acknowledged for the 2019 year that the 'lunch in truck' payment was a meal break payment and it had noting to do with the requirement from the (indistinct) but that actually refers to - - -

PN2014

Hang on, are we looking at the right paragraph, is it paragraph - - -?---Sorry, at paragraph 20 of Hurndell's, Mr Hurndell's statement 'Linfox Armaguard shortly moved the 'lunch in truck' payment from the 2019 EA'.

PN2015

Just to be clear now, we're now looking at paragraph 41?---That's correct, yes. Sorry, no, we're looking at paragraph 41, referring to Mr Hurndell's statement paragraph 20.

PN2016

Yes, that's right, but it's paragraph 41 of your statement, I believe?---That's correct, yes.

PN2017

Yes. Is there a clarification you wish to make to your evidence in paragraph 41?---That's correct, yes.

PN2018

Well, just explain that?---So I stated there that Mr Hurndell states that Linfox Armaguard sought to remove the 'lunch in truck' payment from the 2019 EA. It actually states, in his statement, that Linfox Armaguard sought to remove the meal break payment from the EA, not the 'lunch in truck'.

*** KOBIE SMIT

XN MR WILLIAMS

PN2019

So is your clarification that that first sentence is not a completely correct extract -
- -?---That's correct.

PN2020

- - - of Mr Hurdell's statement?---That's correct, yes.

PN2021

All right. Subject to that clarification, Mr Smit, are the matters of fact set out in your statement correct, to the best of your knowledge and belief?---Yes.

PN2022

Thank you, Commissioner.

PN2023

THE COMMISSIONER: Thank you. You'll be asked question in cross-examination now.

CROSS-EXAMINATION BY MS DALTON-BRIDGES [12.30 PM]

PN2024

MS DALTON-BRIDGES: Mr Smit, I'm Ms Dalton-Bridges, I've just got some questions in relation to your statement. I'd like to take you to, first, annexure 5 of your statement, which is on page 105 of the court book. So has Mr Smit got access to KS5?

PN2025

THE COMMISSIONER: It's not 105.

PN2026

MS DALTON-BRIDGES: Sorry, 157.

PN2027

MR WILLIAMS: Mr Smit certainly has copies of his annexures with him.

PN2028

THE WITNESS: KS5?

PN2029

MS DALTON-BRIDGES: Thank you, Mr Smit. So who is - KS5 is an email, who's the email from, Mr Smit?---From Mr John O'Brien.

PN2030

Right. And who is it too, amongst other people? I suppose, in the first instance, it's just to one person and then cc'd to many others?---That's correct. It's sent to Kate Greig.

PN2031

Right. What does it say, Mr Smit, in regard to, in that first line, about the 'lunch in truck' provision?---

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2032

Kate, updated truck attached, action items are highlighted in yellow. Also attached are the draft clauses around 'lunch in truck', LIT, and job security, for your review.

PN2033

Can I then take you to page 172, which is also part of that annexure, KS5. So Mr O'Brien, at this point, we understand, as of 4 March, is saying that the draft clauses appear as - did you understand that he agreed with them, at this point? So, I'm - sorry if you haven't got to the page yet. It's at page 172, Mr Smit?---Yes.

PN2034

MR WILLIAMS: Just so we have an understanding, Mr Smit doesn't have those page numbers in his statement, I don't think. They've only been added - - -

PN2035

THE WITNESS: No, there's no page numbers in my witness statement.

PN2036

MR WILLIAMS: - - - possibly in the digital court book.

PN2037

THE COMMISSIONER: We'll give him the court book then. If we go to the court book, thanks, volume 1.

PN2038

MS DALTON-BRIDGES: Sorry, Mr Smit.

PN2039

THE COMMISSIONER: Mr Smit, you didn't join Linfox until later, right?---I joined Linfox in 2014, but the role that I would have oversight in this was in May of 2016.

PN2040

When John O'Brien was leaving?---That's correct, yes.

PN2041

Right. So just that's how you need to work with this. You can ask him questions about - - -

PN2042

MS DALTON-BRIDGES: Yes. So my understanding, Commissioner, was that Mr Smit was taking over what had already occurred, in regard to the bargaining - - -

PN2043

THE COMMISSIONER: Yes, but it's after the 4 March. You're coming into it late, aren't you?---That's correct, yes.

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2044

All right, very good. So if you go to the court book, we're at page - - -

PN2045

MS DALTON-BRIDGES: If we go to the court book, at page 172, please, Mr Smit?---Would that be part 1 of 2, or 2 of 2?

PN2046

THE COMMISSIONER: One.

PN2047

MS DALTON-BRIDGES: It will be one?---Okay, page number?

PN2048

THE COMMISSIONER: On the bottom right hand - - -

PN2049

MS DALTON-BRIDGES: Page 172?---One-seven-two, yes.

PN2050

So is it your understanding and how there's been a few minutes intervene, that Mr O'Brien was asking Mr Greig to review what is a draft clause that he agrees with?---That would be my understanding from the mail and the documents.

PN2051

So if you could just have a look, Mr Smit, at 32.1.1, could you please just read the green section for me?---

PN2052

Each employee is allowed an unpaid meal break of 30 minutes. For part of this meal break employees will be paid at the rate of time and a half for a minimum of 15 minutes.

PN2053

Right, and the 'for security reasons' was removed, wasn't it?---At that point, yes, it was removed. Yes, that's right.

PN2054

At that point. So we understand that Mr O'Brien wanted to remove the 'for security reasons'.

PN2055

MR WILLIAMS: That's not a proposition which can be put. First thing is, how the witness knows. The second thing is, that's a contentious matter. We don't know who was responsible for that - - -

PN2056

MS DALTON-BRIDGES: I think it's very clear, based on the email that ahs been addressed to Ms Greig that, 'These are the draft clauses for your review'.

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2057

THE COMMISSIONER: Ms Dalton-Bridges, the bottom of 172 says that, 'The green changes are made by the TWU, during the meeting of 3rd of the 3rd'. They're not Mr O'Brien's words.

PN2058

MS DALTON-BRIDGES: Mr O'Brien is not objecting to them, he's saying, 'We're happy for them to be reviewed, Ms Greig'.

PN2059

THE COMMISSIONER: Yes, but you're asking the witness, does he think that Mr O'Brien was happy with the removal of the words, 'for security reasons'.

PN2060

MS DALTON-BRIDGES: We'll move on them.

PN2061

THE COMMISSIONER: This document looks as though, this was what was orally put at the meeting and marked up by him, on the 4th of the 3rd and passed on to Ms Greig for her review.

PN2062

MS DALTON-BRIDGES: Well, if he move on to KS6 then, you'll see, again, it's an email between Mr O'Brien and Ms Greig and, again, it says, 'We have agreed to the 'lunch in truck' revision because it really doesn't give them anything'. So if we then have a look at the wording associated, on page 187, Mr Smit, when you've got it. Have you got it, Mr Smit?---Yes, I do have it.

PN2063

Thank you. In 32.1.1 can you please read the green section for me?---Only the green section?

PN2064

Just the green section, please?---32.1.4 is blanked out, 'For part of this meal break' blanked out (indistinct), 'employees will be paid at the right rate of time and a half for a minimum of 15 minutes'. In red it says, 'for security reasons', and 'for security reasons' is crossed out again.

PN2065

Right. Okay. So at the bottom of the page, on 16th of the 3rd, it says, 'Agreed to clause above', do we understand that Mr O'Brien had agreed to the clause above?

PN2066

MR WILLIAMS: How is this helping, Mr O'Brien is not here. Maybe a submission could be made about that, if there's a basis for it. Mr Smit is not - - -

PN2067

MS DALTON-BRIDGES: Mr Smit tendered the - - -

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2068

THE COMMISSIONER: Thank you. Do you have a reasonable conclusion that Mr O'Brien agreed to that?---Based on what it says here at the bottom, it says, 'Agreed to the clause above', if that is part of the mail that was sent initially. But if I look at the mail, it actually closes off as 'Regards John', so I'm not sure where this meal breaks, that actual attachment, comes from, whether it's part of - - -

PN2069

So he writes, 'We have agreed to LIT revision' and he's written, 16th of the 3rd, 'Agreed to clause above'. It's a reasonable conclusion, isn't it, that he was okay with that clause?---I would assume that would be it, but it doesn't relate to that mail, as far as I can see.

PN2070

It doesn't relate to that email?---To the mail that was originally referred to, on page 174.

PN2071

Well, it does?---Okay. Then the assumption would be - - -

PN2072

I think we're - because it's attached, you see above, that attachments, it says, 'Job security clause', which is the one on page 186 and then 'TW meal break clause' is this page on 187?---That would be a reasonable assumption that he agreed to the clause above.

PN2073

Thank you.

PN2074

MS DALTON-BRIDGES: Thank you, Commissioner.

PN2075

If we move on further, Mr Smit, you'll see, at your attachment 7, you have a further email, this time it's also between Mr O'Brien to Ms Greig, and it says, 'Kate, agreed clauses attached. Regards, John' what date is that, please, Mr Smit? Sorry, it's page 189?---Yes, 189. The date there?

PN2076

Yes, please?---23 March.

PN2077

23 March, okay. So as we move forward to the agreed clauses attached, according to Mr O'Brien, on page 202, again if we could have a look at 32.1.1, in the green section, and if you could read that for us, Mr Smit?---Again 32.1.4 crossed out, 'For part of this meal break described above', crossed out, 'employees will be paid at the rate of time and a half for a minimum of 15 minutes', added in red, 'for security reasons', crossed out in green, 'for security reasons'.

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2078

And, again, at the bottom of the page, on the 16th of the 3rd, it says, 'Agreed to clause above'?---That's correct.

PN2079

Right. So when you took over the bargaining, Mr Smit, these were the clauses that had been agreed and put in place already, during the bargaining that had occurred prior to your entry?---Can you just clarify in terms of when I took over the bargaining in 2016, I did not take over the bargaining I was purely, FYI, at that point I was probably about two or three weeks into the role, so I did not take over the bargaining then.

PN2080

Right. So who do you say took over the bargaining at that point?---I would assume, looking at the (indistinct) Mr Paul Thompson.

PN2081

Right. Who has now exited the business also?---That's correct, yes.

PN2082

But you were involved in the bargaining at that point?---I was not involved in the bargaining, I was - according to this, I can't recall the (indistinct), but according to the (indistinct) I was added FYI mail on it, but I was not involved in the bargaining, no.

PN2083

However, you did take over the role of Mr John O'Brien?---That's correct.

PN2084

Okay. But you say you take over the role of John O'Brien, but you don't get involved in the bargaining for the 2016 agreement?---What I said was that I was new in the role at that point, I was taking over the role, I did not take over the bargaining at that point, I was hardly about three or four weeks in the role at that point so I did not take over the bargaining.

PN2085

Yes, so that's what I just put to you, Mr Smit - - -?---No, I did not.

PN2086

- - - that you did - you took over the role of Mr O'Brien but you did not take over the bargaining for the 2016 - - -?---That's correct, yes.

PN2087

- - - metropolitan agreement?---That's correct, yes.

PN2088

Right. So the 2016 metropolitan agreement is entered into the Commission. It's certified later on that year and we'll take you, or we can take you to the wording, it's probably not necessary, I don't think, at this point, to take you to the wording to what's in the agreement. However, we understand, from what you say in your statement, that you are then involved in the 2019 bargaining?---That's correct.

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2089

That's correct. So according to your witness statement that you then raise, in 2019, that there is, and it's been referenced in Mr Hurdell's statement, that Armaguard wishes to move the 'lunch in truck' payment?---That's correct.

PN2090

That's correct? How was that going to affect the 15 minutes paid meal break payment, Mr Smit?---(Indistinct) you referred to that, correct.

PN2091

But that's not a 'lunch in truck' payment is it, Mr Smit?---The wording referred to the exact wording in the EA, correct, yes.

PN2092

Okay, so let's go to the agreement itself, shall we? So if we go to the 2016 agreement, and the easiest way in the court book, so the 2016 agreement, we'll just get the reference for you, in the court book, so it's easier for you to refer to. So it was Darren Jones's statement, which is in court book 2. So, sorry, if we can get you to go to the second court book, Mr Smit?---Yes.

PN2093

And if we can get you to go to page 1014?---Sorry, page?

PN2094

One thousand and 14?---A thousand and 14. Okay.

PN2095

And it's actually the page before that, it's 1013. So at the bottom of page 1013 it says, 'Meal breaks' and can you see the section where it says 32.1.4?---Yes.

PN2096

And it says, 'For part of the meal break proscribed above employees will be paid at the rate of time and half', it should be, that looks like a typographical error, 'for a minimum of 15 minutes, for security reasons'?---That's right.

PN2097

Right. So that had nothing to do with 'lunch in truck', did it, Mr Smit?---The clause doesn't - the clause (a) does not reflect 'lunch in truck'.

PN2098

That's right, so you weren't looking to remove that clause from the agreement, when you bargained in 2019, as referenced in your statement?---Yes, we were looking to remove that clause.

PN2099

I'm sorry, I didn't catch that, Mr Smit?---We were looking to remove the clause that actually referred to that.

PN2100

You were looking to remove that clause?---Yes, that's correct.

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2101

However, that's not the 'lunch in truck' clause?---As it is described there, no it's not.

PN2102

It's not. So can we ascertain then that the respondents, the company that you work for, have a habit of referring to meal break payment as 'lunch in truck'?---We did, as well as the TWU, as well as the members.

PN2103

And the members may well have taken form from the employer, it would be reasonable to assume. Okay - - -

PN2104

THE COMMISSIONER: Is that a question or a statement?

PN2105

MS DALTON-BRIDGES: Pardon?

PN2106

THE COMMISSIONER: Do you want to answer that?---No it's not in their minds, it's absolutely 'lunch in truck'. Even with the last negotiations the TWU's claim was 'lunch in truck', which referred to the employees having a break. So, in their minds, not driven by the company, but in their minds it is 'lunch in truck' 100 per cent.

PN2107

MS DALTON-BRIDGES: Let me then take you to Mr Hurndell's statement. Mr Hurndell's statement is in court book 1, and I think you've corrected this yourself, but Mr Hurndell's statement commences on page 56 of the court book. On page 64 you can see that there is a table of status of claims, to do with the 2019 bargaining?---Yes, I see - - -

PN2108

Have you got that, Mr Smit?---Yes, I've got that.

PN2109

If you have a look at 32.1.4 what does it say beside there, what's the title?---'The meal break payment'.

PN2110

'Meal break payment'. So certainly, at that point, the TWU was referring to the payment as a meal break payment?---That's correct.

PN2111

Not a 'lunch in truck' payment?---That's correct, according to that.

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2112

That's right, according to the TWU document. So the respondents we've got are talking about 'lunch in truck', but they're talking about, they purport, both the meal

break payment and a 'lunch in truck' payment and they continue to refer to the meal break payment as 'lunch in truck' right through to this day, it would appear?---The TWU?

PN2113

To the respondents, your company?---The respondent as well as the TWU.

PN2114

Well, the TWU quite clearly in front of you, Mr Smit, has not responded and entered that it is a 'lunch in truck' payment, they've said it's a meal break payment?---They've used the direct wording from the - from the agreement, which I do not disagree with, but in their minds and in the conversations it was called always about 'lunch in truck', as is evident in the latest - in their 2022 log of claims, where they refer to the break in truck, or having 'lunch in truck'.

PN2115

Yes, and there's been some confusion because there was a change of personnel and that's how some of that confusion came about, because there wasn't a consistent approach to calling a meal break payment a meal break payment, and the 'lunch in truck' payment, the 'lunch in truck' payment. They're two separate entitlements, aren't they, Mr Smit?---In the wording they might be but, you know, in the intent and in the - - -

PN2116

Well, not in the intent, Mr Smit.

PN2117

MR WILLIAMS: Let him finish. Please let him finish.

PN2118

MS DALTON-BRIDGES: They're two separate entitlements, aren't they? The wording is what counts, not what the intent is.

PN2119

MR WILLIAMS: That's the - - -

PN2120

MS DALTON-BRIDGES: What's written on the page - - -

PN2121

THE COMMISSIONER: He's entitled to answer the question.

PN2122

MR WILLIAMS: And that was a legal conclusion and not necessarily an accurate legal conclusion.

PN2123

THE COMMISSIONER: Well, you're - - -

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2124

MS DALTON-BRIDGES: Mr Smit, I'll start again. Are there two entitlements on the page?---There's one entitlement on the page, it says, 'meal break payment'.

PN2125

Right. In the agreement are there two entitlements?---It talks about a meal break - a meal break payment - - -

PN2126

Yes?--- - - - and it talks about 'lunch in truck' directly.

PN2127

Correct, so there are two separate entitlements?---That's correct.

PN2128

Do you think it's fair to say that they have been conflated or put together at times and talked about as the same thing as 'lunch in truck'?---No, I don't think so.

PN2129

You don't think so? So you just said, a minute ago, that - - -?---No, it is not.

PN2130

- - - you did think so?---It's not, no. The reason I say that, if you look at the intent of the second one, that is where it is actually directed and they're not allowed to get out of the truck at all, because of safety or security reason, so it's a different intent.

PN2131

Right. Mr Smit, that's an interesting point. So whose ever monitored whether they got out of the truck or not, Mr Smit, if they were directed to lunch in the truck?---They would get an instruction, it's a different scenario. If there's a real threat they would be instructed not to leave the truck at all.

PN2132

So 'lunch in truck' was paid in other states, till 21 August 2021. What checking was done that people were in the truck for the 15 minutes that they were paid?---I don't think there's ever been any checking on that and neither, at that point, in Queensland.

PN2133

Because in Queensland it wasn't a 'lunch in truck' payment, was it, Mr Smit? What was it?---No, it was not, but it wasn't monitored in the other regions (audio malfunction).

PN2134

No, Mr Smit, the question is - - -

PN2135

THE COMMISSIONER: Sorry, can I just clarify, what period of time are you talking, Ms Dalton-Bridges?

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2136

MS DALTON-BRIDGES: I'm talking from the period before 21 August '21, when they stopped the payment. In Queensland it wasn't a 'lunch in truck' payment, was it, Mr Smit?---Not according to the wording.

PN2137

Mr Smit, we don't work off something that's not the wording. The wording of the agreement is what compels both parties to comply. We don't make up the wording or conflate or have a fantasy set of wording that sits somewhere else. The wording is the wording. So the wording in the agreement in Queensland, prior and post 21 August '21, was to a meal break allowance?---That is what the wording says, yes.

PN2138

That's what the wording says, yes, Mr Smit, and that's what the agreement required the respondent to comply with. Mr Smit, I'll take you further in your statement. You talk about, in - and I think, to some extent, it's been dealt with by the correction, you talked, in para 9, sorry, my mistake. You talked further, in para 14, about:

PN2139

Lunch in truck has appeared in the enterprise agreements covering Armaguard and Point-to-Point for many years.

PN2140

And then you talked further about, later on in your statement, about the fact that you were - sorry, and I've got the wrong statement in front of me, which is very unhelpful, that you had not seen the TWU refer to the payment as a 'lunch in truck' payment. Now, as we've seen, from Mr Hurdell's statement, that's not correct. So at paragraph 41 you did correct that. So you would agree that the TWU were referring to the payment as a meal break payment - - -

PN2141

MR WILLIAMS: Well, just to clarify, Mr Hurdell's statement was made recently, it wasn't made in 2015 or 2016.

PN2142

MS DALTON-BRIDGES: However, the statement that comes and the table that came - - -

PN2143

THE COMMISSIONER: It's a very long question, I've lost track. Can you ask a short question of the witness, please?

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2144

MS DALTON-BRIDGES: Right. Paragraph 41 of your statement, Mr Hurdell's statement had a table attached that we went to recently and in that table it showed that there was a meal break payment. So the TWU were referring to meal break payment, you've acknowledged that by your own correction. That's important to acknowledge that the TWU, at that point, were understanding that there was a

difference between 'lunch in truck' and between the meal break payment, yes?---Yes, based on that document, yes.

PN2145

All right. I take you to, then, clause 33(d) of your statement?---Sorry, which one?

PN2146

33(d), sorry, Mr Smit?---33(d). In the last clause you say:

PN2147

The intention of the parties, as far as I can see, was to maintain the same approach to the 'lunch in truck' payment as in the enterprise agreements that existed prior to the 2016 country EA and the 2016 metropolitan EA.

PN2148

Now, I can see absolutely no basis for that opinion or assumption. What would lead you to say that, Mr Smit?---Well, the intention of, in my view, because I hadn't been part of it but the intention was not to remove a meal break but it was referring to the 'lunch in truck' and the intention, in my mind, has always been to the 'lunch in truck' based on all my discussions, all the terminology that was used in the last three or four years, or five years, both by TWU and the business.

PN2149

But that's simply not correct, is it, Mr Smit? When you look at your own annexures, so if we go back to that annexure 7, which is on page 202 of the court book, what we can see and what you have said here is, 'The payment has stayed the same'. However, nothing else is the same, except the payment. Nothing else about the words on the page are the same?---That's correct. But I still see that as 'lunch in truck'. I have not been involved in the negotiations back then, but the way I see that is that it is referred to 'lunch in truck'.

PN2150

However, that's got nothing to do with the words on the page, and the words on the page are what's certified.

PN2151

THE COMMISSIONER: Well, they're not. Two hundred and two is not.

PN2152

MS DALTON-BRIDGES: However, those words become an enterprise agreement.

PN2153

THE COMMISSIONER: No, 202 they do not.

PN2154

MS DALTON-BRIDGES: Well, what's reflected - - -

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2155

THE COMMISSIONER: This was put as something, in March, for something that was agreed and it's not what was in the final clause.

PN2156

MS DALTON-BRIDGES: However, it's very similar to what's in the final clause, Commissioner.

PN2157

THE COMMISSIONER: Sure.

PN2158

MS DALTON-BRIDGES: And we would say it doesn't make a large amount of difference, the ordering of the clauses.

PN2159

THE COMMISSIONER: Well, it might.

PN2160

MS DALTON-BRIDGES: Well, when we go to looking at - - -

PN2161

THE COMMISSIONER: When we've got personnel leaving this, this being put up as what the clause should look like and, 'This is what we agreed', it doesn't look identical.

PN2162

MS DALTON-BRIDGES: Well, it doesn't look identical, but it also doesn't have a material difference, we could say.

PN2163

THE COMMISSIONER: I'll be the one to decide that.

PN2164

MR WILLIAMS: I would definitely disagree with that proposition.

PN2165

THE COMMISSIONER: Mr Fernandez put up a different clause.

PN2166

MS DALTON-BRIDGES: Well, Mr Fernandez didn't have the benefit of the minutes that should have been used internally that were not used internally by the respondent, we would say.

PN2167

THE COMMISSIONER: All I know is Mr Fernandez, in June, put up different wording than what was purportedly agreed in March.

PN2168

MS DALTON-BRIDGES: But that was not shared with Mr Fernandez, as agreed, it was shared internally within the respondent, as agreed.

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2169

THE COMMISSIONER: How would I know?

PN2170

MS DALTON-BRIDGES: Well, we know because we don't have it. If we had it we would have said, 'Here it is'.

PN2171

THE COMMISSIONER: This is all material, Ms Dalton-Bridges.

PN2172

MS DALTON-BRIDGES: Pardon?

PN2173

THE COMMISSIONER: It's all material.

PN2174

MS DALTON-BRIDGES: Well, it is the material.

PN2175

THE COMMISSIONER: No, it's material and carries weight.

PN2176

MS DALTON-BRIDGES: Well, it is material and carries weight, but we didn't have it. So if we had it we would have put it forward in our material.

PN2177

THE COMMISSIONER: All right. Well, just make sure that this witness, who you're not telling him that these are the words that were approved, they weren't.

PN2178

MS DALTON-BRIDGES: The words that were approved though, in the agreement, we can go to them again, are in Mr Darren Jones's statement. So if we go to Darren Jones's statement, it's in book 2 and it's in 1013, I think. So these are the words on the page, Mr Smit. Would you like to read them, at 32.1.4?---

PN2179

For part of this meal break proscribed above employees will be paid at the rate of time and a half for a minimum of 15 minutes, for security reasons.

PN2180

Right. Does it mention a truck in that clause?---No, it does not.

PN2181

Does it mention being directed to sit in a truck?---No, it doesn't.

PN2182

Right. So it's totally different, isn't it, to the 'lunch in truck'?---Yes.

*** KOBIE SMIT

XXN MS DALTON-BRIDGES

PN2183

Yes, all right. Thank you, Mr Smit, I've got no further questions.

PN2184

THE COMMISSIONER: Anything arising?

RE-EXAMINATION BY MR WILLIAMS

[1.00 PM]

PN2185

MR WILLIAMS: Mr Smit, you were asked a number of questions about your own conclusions and beliefs about clauses, whether they were different or the same. While you have that 2016 wording in front of you, can I just direct you back to clause 32.1.4, and I'll also ask you a question about your understanding. What's your understanding as to what's implied or meant by 'for security reasons'?---Sorry, can you just explain to me which one you're referring to, page?

PN2186

Yes. We're at page 1013 of the - - -?---Yes, Okay.

PN2187

And we're looking at the very clause that your last question was about?---Okay.

PN2188

And you read, I think you were actually asked to read aloud clause 32.1.4 and you responded to a question, you made the obvious answer, 'lunch in truck' is not mentioned?---Okay.

PN2189

To your own subjective understanding, what did you understand to be meant by 'for security reasons'?---'For security reasons', that could be paid and that, in my mind, would be for the security reasons would be at the time of (indistinct) 'for security reasons' is for a reason staying on truck, for example.

PN2190

Thank you. No further questions.

PN2191

THE COMMISSIONER: All right. Having a look at 33(d) of your statement, 139?---Yes, Commissioner.

PN2192

You say that you haven't come across any records that think that the respondent had agreed to change. It was business as usual, you say. But how involved were you in this, in 2016?---Not involved at all and, sorry, that's the reason why I said, 'none of the records', I only could make that assumption, based on documents, I was not involved at all.

PN2193

Mr O'Brien leaves?---He left, yes.

*** KOBIE SMIT

RXN MR WILLIAMS

PN2194

Yes. You've come in to take his role?---That's correct, yes.

PN2195

But he's the one who's been working with Mr Fernandez on the words?---That's correct, yes.

PN2196

Did you not check what he had left you with?---No. At that point it was a takeover process and any negotiations was given over to HR, which was Paul Thompson, at that point. So that was given to them to run with and it was not - because I was in a takeover process and getting aligned with the rest of the operations, I was not involved in that negotiations. That is the main reason.

PN2197

But we know that, in any event, for the life of the 2016 agreement people are paid the payment, whether they have their lunch in the truck or not and, again, in 2019, so the business was - - -?---Yes, they were paid for meal breaks.

PN2198

So the business was okay with paying it, weren't they?---They were paid the meal breaks if they had lunch on truck, if, for one reason or another, they did not go out on the road, they would not get paid the meal break or the 'lunch in truck' payment.

PN2199

If they didn't go out on the road?---Yes, if they didn't go out on the road, in other words, if they were not in a truck, that payment would not have been paid. If they, for example, were on light duties, alternative duties, et cetera, or they would have been utilised in a different capacity, where they don't go out on the road, they would not have been paid the 'lunch in truck', and we would be able to know that because we would know who goes out on the road and how not.

PN2200

Do they get it paid on annual leave or sick leave?---No, it doesn't get paid there.

PN2201

Right. So they have to go out on a truck to get it?---That's correct, yes.

PN2202

Perform their normal duties to get it?---Perform their normal duties, yes.

PN2203

But the business never had a problem paying it, for the life of the 2016 agreement?---That's correct.

PN2204

And never checked up on anybody?---They didn't check up on them, but it would only be paid where we know they go out on the truck.

*** KOBIE SMIT

RXN MR WILLIAMS

PN2205

Yes, but you didn't care what they did in their 30 minutes, did you, other than be sensible and safe?---That's correct. And that would have been all across the business it's exactly the same.

PN2206

Right. But they could have spent the entire 30 minutes outside of the truck and still be paid?---That's correct. They - they were - because of security reasons at that point, they were required to have their lunch in the truck, at that point.

PN2207

That's not the evidence I've heard. Are you saying that they were checked upon?---No, no, they were not checked upon but the company was paying it. In other words, to answer your question, if somebody goes out on the road and they have their lunch outside the truck we would not know that.

PN2208

No, and they'd still be paid?---And they'd still be paid, yes.

PN2209

Yes, so there's no checking, right?---No. No, there was no checking.

PN2210

So company's happy to do that, throughout 2016 agreement?---That's correct, yes.

PN2211

Then 2019, almost rolls over the words, loses some formatting?---Yes, it's basically the same situation, yes.

PN2212

Didn't seem to make any changes then?---No.

PN2213

Because the business was comfortable paying it?---That's correct.

PN2214

But it's Mr Jones who says, at some point, 'This doesn't look right'?---That's correct.

PN2215

Anything arising out of that, Ms Dalton-Bridges?

PN2216

MS DALTON-BRIDGES: No, thank you, Commissioner.

PN2217

THE COMMISSIONER: Anything arising?

*** KOBIE SMIT

RXN MR WILLIAMS

PN2218

MR WILLIAMS: There might be one thing arising. Just so I'm clear, Mr Smit, and perhaps I'm not, you've accepted, and I think it's the evidence that there wasn't

much checking, if any. Is it your understanding that the payment was made, for those years, on an assumption that the drivers were spending time in the truck?---On an assumption, 100 per cent, but there was no checking so the assumption is that they would have had their lunch on a truck.

PN2219

That was all.

PN2220

THE COMMISSIONER: What assumption? Did anybody make any enquiries? I mean, 'How's your lunch on the truck, boys?'. I mean what assumption?---No, it wasn't monitored. There was not, clearly, a means of monitoring it, except a crew to actually have lunch on the truck and - - -

PN2221

If they wanted to?---If they wanted to.

PN2222

Personal choice?---That's correct.

PN2223

All right, thank you. Nothing further then?

PN2224

MS DALTON-BRIDGES: Thank you, Commissioner.

PN2225

MR WILLIAMS: No, Commissioner, that's enough for that.

PN2226

THE COMMISSIONER: All right. Thanks, Mr Smit, for giving evidence, you're now free to leave. Thank you?---Thank you.

<THE WITNESS WITHDREW

[1.07 PM]

PN2227

THE COMMISSIONER: Shall we have lunch, parties?

PN2228

MR WILLIAMS: Yes, Commissioner.

PN2229

THE COMMISSIONER: All right, 1.50 pm then, how does that sound.

PN2230

MR WILLIAMS: That's fine.

PN2231

THE COMMISSIONER: I think that mirrors yesterday, doesn't it?

*** KOBIE SMIT

RXN MR WILLIAMS

PN2232

MR WILLIAMS: It does, very nicely.

PN2233

THE COMMISSIONER: All right. We'll resume at 1.50.

LUNCHEON ADJOURNMENT

[1.07 PM]

RESUMED

[1.54 PM]

PN2234

MR WILLIAMS: Thanks, Commissioner, I call Darren Jones.

PN2235

THE COMMISSIONER: Mr Jones, it's Commissioner Hunt here, you can hear us, can you?

PN2236

MR JONES: I can, thank you.

PN2237

THE COMMISSIONER: My associate will administer an affirmation and then Mr Williams will take you through your statement. Thank you.

PN2238

THE ASSOCIATE: Mr Jones, could you please state your full name and address?

PN2239

MR JONES: Darren Jones, (address supplied).

<DARREN JONES, AFFIRMED

[1.55 PM]

EXAMINATION-IN-CHIEF BY MR WILLIAMS

[1.55 PM]

PN2240

MR WILLIAMS: Mr Jones, I wonder if you can give your full name for the Commission, please?---Darren Jones.

PN2241

Thank you. You're employed as general manager, workplace relations, of Linfox Australia Pty Ltd?---Correct.

PN2242

And you've made a statement relevant to the matters before the Commission today?---I have.

PN2243

And do you have a copy of that statement with you?---I do.

*** DARREN JONES

XN MR WILLIAMS

PN2244

Thank you. Mr Jones, are the matters of fact set out in that statement, to the best of your knowledge and belief, correct?---Yes.

PN2245

Thank you. Mr Jones, you'll now be asked questions by the TWU advocate. I can inform you that there is a digital court book and you may be asked questions by reference to that. If that's the case then it will be available to you on the screen and we'll manage that from this end?---Understood.

PN2246

Thank you.

CROSS-EXAMINATION BY MS DALTON-BRIDGES

[1.56 PM]

PN2247

MS DALTON-BRIDGES: Good afternoon, Mr Jones, my name is Helena Dalton-Bridges. Can you hear me?---I can.

PN2248

You can, excellent, thank you. Mr Williams has made reference to the court book and unfortunately I will need to use the court book, so if we could bring that up please.

PN2249

The first page we're going to go to, in the court book, is page 14. Now, if we move down to 34.1.1, Mr Jones, can I get you to read the third paragraph, please, which has got a bracket around it?---

PN2250

For part of the meal break proscribed above employees will be paid at the rate of time and a half for a minimum of 15 minutes, for security reasons.

PN2251

Right, and what document does this clause sit it, it's written at the bottom of the document?---It's written, it says, Armaguard and Transport Workers' Union Queensland Metropolitan Branches Road Crew and Associated Areas Enterprise Agreement 2016.

PN2252

Right. So do you understand, Mr Jones, that this has been a provision since the 2016 agreement has been in place?---That sounds correct, yes.

PN2253

Can I also take you to the next page, and I'm going to ask you also to read the clause at the top of the page, which has also got a bracket around it. Now, it doesn't seem to, on this copy. So it commences with, 'The employee'?---Yes:

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2254

The employee will be paid at the rate of time and a half for the time spent inside the vehicle. Accordingly, employees working on a three person crew will be entitled to a 45 minute meal break.

PN2255

Right. That, of course, is coupled with the end para of the previous page. So, sorry, just to go back, the last para on the previous paid said:

PN2256

Where an employee is required to remain inside an armoured vehicle longer than 15 minutes of the meal break, at the direction of Armaguard, for security reasons.

PN2257

Let's start with this clause. So what do you say has to happen in order for this clause to be enlivened?---Okay. So my reading of clause 34.1 commences with each employee is allowed an unpaid meal break of 30 minutes and - - -

PN2258

However, what I'm taking you to, Mr Jones, is the section at the end of 34.1.1, which is para 5, which says:

PN2259

Where an employee is required to remain inside an armoured vehicle longer than 15 minutes of the meal break, at the direction of Armaguard, for security reasons.

PN2260

So what are the qualifiers that enliven that clause?---Well, the qualifiers are - contextually have to be read with the meaning of 'meal break', and meal break appears throughout clause 34.1 and 34.1.1.

PN2261

Right what is the specific - - -?---When one is required to remain in an armoured vehicle longer than 15 minutes, one is paid at time and a half. So that also, contextually speaking, also raises the concept of the first 15 minutes.

PN2262

Yes, that's exactly right. So there has to be a direction of Armaguard, though, doesn't there, for a crew member to be inside the vehicle for longer than 15 minutes?---In reading clause 34.1, yes, there has to be a direction to remain in the vehicle for longer than 15 minutes and one is paid at time and a half.

PN2263

That's exactly right, thank you, Mr Jones. Now, if we go back to the third para, what has to happen in order for that to be paid?---I'm not sure of the question.

PN2264

Right. So to enliven the entitlement for the employee, what has to occur?---So for security reasons, the third paragraph clearly says:

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2265

For part of the meal break described above, the employees will be paid at the rate of time and a half for a minimum of 15 minutes, for security reasons.

PN2266

Right, so there - - -?---And security reasons relates to being inside the vehicle.

PN2267

No, those are additional words that aren't there, Mr Jones. So - - -?---Well, when read in context with paragraph - - -

PN2268

Mr Jones - - -

PN2269

THE COMMISSIONER: Hang on, Ms Dalton-Bridge, you've asked him for his understanding of the clause.

PN2270

MS DALTON-BRIDGES: I said, what had to happen to enliven it, that doesn't mean putting additional words there, Commissioner.

PN2271

MR WILLIAMS: He's answered the question.

PN2272

THE COMMISSIONER: You can put something else to him, but you can't say 'No'. You can put something else to him.

PN2273

MS DALTON-BRIDGES: Thank you, Commissioner.

PN2274

THE COMMISSIONER: I just want to make sure that this is not the 2016 agreement, because the 2016 agreement has the proper numbers and it's actually 32. I don't know why that is written on the bottom there, but when we go to 1013, remember the formatting is lost in the 2019 agreement, and 2022. There's actually some subclauses in the 2016 agreement.

PN2275

MS DALTON-BRIDGES: Right.

PN2276

THE COMMISSIONER: They're available at 1013.

PN2277

MS DALTON-BRIDGES: Yes.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2278

THE COMMISSIONER: I do want to understand how we lost subclause formatting in - - -

PN2279

MS DALTON-BRIDGES: I think in 2012 we say that that's the 2019 agreement. So in 2016, where it looks like the same clause has been copied, rather than - - -

PN2280

THE COMMISSIONER: If you to go 1013, page 1013, it's clause 32.

PN2281

MS DALTON-BRIDGES: Right. Mr Jones, for ease, we will bring up the court book at 1013.

PN2282

THE COMMISSIONER: Because by 2019 it's in clause 34 and the formatting is lost.

PN2283

MS DALTON-BRIDGES: So at 2013, Mr Jones, you'll see there, as the Commission has properly corrected us, for the 2016 agreement the formatting is still in place and it says - and does say, at 32.1.4:

PN2284

For part of the meal break proscribed above employees will be paid at the rate of time and a half for a minimum of 15 minutes, for security reasons.

PN2285

We're taking that 'halt' is actually a mistake and it should be 'half'. So, again, to enliven that particular provision, employees need to be on a meal break, is that correct?---Yes. I mean when read contextually, in conjunction with - - -

PN2286

Yes or no?--- - - - 32.1 - - -

PN2287

Yes or no, Mr Jones.

PN2288

THE COMMISSIONER: No, Ms Dalton-Bridges, you don't get to decide how a witness answers the question.

PN2289

MS DALTON-BRIDGES: Well, that was the question, Commissioner, did they have to be on a meal break, it's a yes or no answer.

PN2290

THE COMMISSIONER: No, it's not a yes or no answer. He can provide any answer he likes, as long as it's directly answering your question. I won't have it in any hearing where someone get's told it's a yes or no.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2291

MS DALTON-BRIDGES: Well, Commissioner, we seem to have heard some of that this morning, unfortunately - - -

PN2292

THE COMMISSIONER: I've never directed anybody to say, 'Give a yes or no answer'. It hasn't happened, Ms Dalton-Bridges. Please answer the question.

PN2293

MS DALTON-BRIDGES: So you agree, Mr Jones, that an employee would have to be on a meal break?---Well, when read contextually, in conjunction with 32.1, 'and for security reasons'. They would be paid at the rate of time and a half for a minimum of 15 minutes.

PN2294

So they are paid for 15 minutes:

PN2295

For the part of the meal break proscribed above, employees will be paid at the rate of time and a half, for a minimum of 15 minutes, for security reasons.

PN2296

So it is a given that they are paid for security reasons, because they will be paid at the rate of time and a half. It's not they may - - -?---Yes, they'll be paid at - - -

PN2297

- - - or shall?---No, they will be paid at a minimum - for 15 minutes, at the rate of time and a half, for security reasons.

PN2298

That's exactly right?---And when read in conjunction with that provision, security reasons means being inside the vehicle having their lunch - - -

PN2299

Mr Jones, I would put - - -?--- - - - if required by Armaguard.

PN2300

I would put to you that that's absolutely not agreed and never has been agreed and never - has not been the agreement of the parties at all. If you choose to, you know, create those words in your own mind, that's your own mutual folly.

PN2301

MR WILLIAMS: That's a - - -

PN2302

THE WITNESS: No, I don't create those words. That is my understanding and my interpretation of the provision, when I first came across to Armaguard in April '20 and I read the instrument.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2303

MS DALTON-BRIDGES: Well, that might be, but it's not any other detailed understanding that's been put anywhere, in writing, in regard to this entitlement.

PN2304

MR WILLIAMS: What's not particularly fair.

PN2305

THE WITNESS: I disagree. When read in context - - -

PN2306

THE COMMISSIONER: You need to put it as a question.

PN2307

MS DALTON-BRIDGES: Well, what we say is, as printed on the page, and I'd ask you to read what's on the page, not what's in your own mind, that it is:

PN2308

For the part of the meal break proscribed above, employees will be paid at the rate of time and a half, for a minimum of 15 minutes, for security reasons.

PN2309

Is that correct, Mr Jones?---That's what clause 32.1.4 says, 'for security reasons'.

PN2310

Thank you, Mr Jones. All right, if we then have a look at the 2019 agreement. The 2019 agreement is in the court book and it is on page - - -

PN2311

THE COMMISSIONER: It's 1012.

PN2312

MS DALTON-BRIDGES: Our court book, I'm sorry, has come asunder, which has made it a little challenging.

PN2313

THE COMMISSIONER: We have a spare, if you'd like it?

PN2314

MS DALTON-BRIDGES: Thank you. It's just, yes, our lever arch has given way on us.

PN2315

As the Commission had earlier pointed out, Mr Jones, you might see, on page 1012 of the court book, that we had lost the formatting of this clause, for some reason, in the 2019 agreement. So the 2019 agreement is Armaguard and Transport Workers' Union Queensland Road Crew Enterprise Agreement 2019, do you agree?---Yes.

PN2316

The last clause, under 3.1.1 on that page, is:

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2317

If an employee is requested to work through their meal break they must be paid at the rate of double time, until the commencement of their meal break.

PN2318

The clause above, 3, is:

PN2319

For the part of the meal break proscribed above, employees will be paid at the rate of time and a half, for a minimum of 15 minutes, for security reasons.

PN2320

Do you agree that that's what the clause says?---As you've just read it, that's what it says, yes.

PN2321

Right, excellent, thank you. If we move on to page, and it's going backwards, 1011, you'll see the title of the agreement has become shorter, Armaguard Road Queensland Agreement 2022. If we have a look under 34.1.1, and it's the third para again:

PN2322

For the part of the meal break proscribed above, employees will be paid at the rate of time and a half, for a minimum of 15 minutes, for security reasons.

PN2323

Do we agree that that's what there now?---I agree that's what's there, yes.

PN2324

Right, excellent. All right, I'd now like to take you to page 1036 of the court book please? Now, this is an attachment to your statement, Mr Jones, and it's where you begin to detail the correspondence that you sent to the various secretaries, in July of 2021, do you agree?

PN2325

THE COMMISSIONER: Mr Gleeson, can you please move it on?

PN2326

MS DALTON-BRIDGES: Alternatively, Mr Jones, it's your DJ11?---Thank you, Commissioner.

PN2327

Thank you. So I'll take you to 1035, if we can. If you can just tell us, and this is to Richard Olsen, who is the secretary of New South Wales and Queensland, including the ACT. The title of this correspondence to him was?---Well, on that page that I'm seeing it says, 'P-to-P New South Wales and ACT, lunch on vehicle allowance - covert cash collector'.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2328

Correct. So, again, to Richard Olsen, on 1037, your address correspondence and the point for doing this is to indicate that the provisions area all slightly different. So the provision to the ACT was addressed as?---'Lunch on vehicle allowance - ACT'.

PN2329

Right. On page 1039?---'Lunch on vehicle allowance - New South Wales'.

PN2330

Right. And, finally, on page 1041?---'Regular meal break (paid) - Queensland'.

PN2331

Right. So there was an understanding, wasn't there, by yourself, Mr Jones, that the provision in Queensland was a different provision to the rest of the country?---The provision in Queensland and, as you will have seen through all of those letters that I've put out on or about 8 July, were differently because the provisions were slightly different in each instrument.

PN2332

However, Queensland was the only instrument that had a regular meal break paid. There were no other instruments that made reference to a meal break?---But reading in context with that letter, and correct, to a certain point, and that's why I've said, in the second sentence, 'Therefore the meal break will only be paid where employees are instructed by their branch manager, or his or her representative, to have their meal break in an armoured vehicle'.

PN2333

That's where we have the problem, don't we, because the provision never made any reference to an armoured vehicle or any type of vehicle at all, did it, Mr Jones?---Well, I disagree. Clause 34.1.1 does make reference to time spent inside a vehicle.

PN2334

Well, no. 34.1.1(c) makes reference to an unpaid meal break, I think you'll find?---No, I think you'll see, at 34.1.1 it says:

PN2335

The employee will be paid at the rate of time and a half for the time spent inside the vehicle.

PN2336

Right. So you're calling it (c), which is the third para. It actually has no marking on it at all. But in terms of the actual wording, the wording is:

PN2337

For the part of the meal break proscribed above, employees will be paid at the rate of time and a half, for a minimum of 15 minutes, for security reasons.

PN2338

?---Correct. And when read in context:

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2339

Where an employee is required to remain inside an armoured vehicle for longer than 15 minutes of the meal break, at the discretion of Armaguard, for security reasons.

PN2340

However, - - -?---

PN2341

The employee will be paid at the rate of time and half for the time spent inside the vehicle.

PN2342

So those two sentences, or paragraphs, rather, have to be read together.

PN2343

Well, no, they don't need to be read together at all, because the first - - -?---Well, they do.

PN2344

- - - 15 minutes, Mr Jones, has nothing to do with the second clause, which is clause 5, which talks about if you are directed to sit in an armoured vehicle. So the first - - -?---I disagree with that.

PN2345

- - - clause, and you may disagree with that, but that's the provision. It doesn't make any reference, at all, to a vehicle and has never made any reference to a vehicle?---Well, the words 'security reasons' only appear twice in the entirety of the enterprise agreement and the phrase 'security reason' appears only in clause 34.1.1. So when read in context:

PN2346

For the part of the meal break proscribed above, employees will be paid at the rate of time and a half, for a minimum of 15 minutes, for security reasons.

PN2347

Then reading paragraph 5:

PN2348

When an employee is required to remain inside an armoured vehicle for longer than 15 minutes, at the direction of Armaguard, for security reasons.

PN2349

There's no other interpretation one can make, in relation to 'security reasons', it is related to having a lunch break inside the armoured vehicle.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2350

Mr Jones, that's your position but, of course, that's what this matter is about and we would purport that there are many, many other reasons for 'security reasons'. I'd like to take you to page 202 of the court book, please? This is an annexure to

Kobie Smit's statement and it's Annexure 7. Now, you can see, in green, at 32.1.1, and this is an email between John O'Brien and Kate Greig, and John O'Brien, of course, was leading the negotiations at this point, between Armaguard and the TWU. John O'Brien says, as of 21 March, on page 174, if you what to actually see that reference, that this is an agreed clause. So he says:

PN2351

We have agreed to the 'lunch in truck' revision because it doesn't really give them anything.

PN2352

The clause - - -?---Yes, I can - - -

PN2353

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

PN2354

Yes, you can see that, all right. So if we go to page 202, the clause that he has agreed to, as of 16th of the 3rd, according to Armaguard's own documents, is that:

PN2355

Each employee is allowed an unpaid meal break of 30 minutes.

PN2356

As it currently stands in the agreement:

PN2357

For the part of this meal break employees will be paid at the rate of time and a half, for a minimum of 15 minutes, for security reasons.

PN2358

Now, the 'for security reasons', do you understand the genesis of that, Mr Jones?---No, possibly - I mean I understand my interpretation of it but, possibly, if you could explain it to me, I'm not sure what you're putting to me.

PN2359

Right. So the genesis, through the negotiations, Mr Jones, is that the TWU actually wanted the 'for security reasons' added in. So if we - - -

PN2360

THE COMMISSIONER: We've done this before, Ms Dalton-Bridges.

PN2361

MS DALTON-BRIDGES: Pardon?

PN2362

THE COMMISSIONER: We've done this before. You can't assert that.

PN2363

MS DALTON-BRIDGES: Well, it seems clear, Commissioner.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2364

THE COMMISSIONER: No, it does not. I've done this before. Mr Fernandez - obviously there was some notes that Mr O'Brien made, at the meeting and it looks as though they were taken out, but this looks as though Mr O'Brien put 'for security reasons' back in. How are we at cross-purposes here?

PN2365

MS DALTON-BRIDGES: Well, Mr Fernandez says, in his own statement, that he took 'for security reasons' - he put security reasons back in.

PN2366

THE COMMISSIONER: Where does he say that?

PN2367

MS DALTON-BRIDGES: If we go to this statement, Commissioner - - -

PN2368

MR WILLIAMS: We'll check what he said, but it is absolutely a contested matter so it can't be put as a fact.

PN2369

THE COMMISSIONER: At 73.

PN2370

MS DALTON-BRIDGES: So Mr Fernandez says, 'Too much has been made of 'security reasons' or 'for security reasons'.

PN2371

THE COMMISSIONER: If you could please move down to 14.

PN2372

MS DALTON-BRIDGES: So it's para 8:

PN2373

Way too much has been made of the words 'for security reasons'. My recollection of the drafting is that we just took the clauses and we put them together. We then created the 15 minute break not being conditional.

PN2374

And you're right, Commissioner, down to 14:

PN2375

The negotiations were happening with John O'Brien as the Armaguard lead and I think when we landed on the words for the meal break allowance between us, even though Armaguard had indicated they were just my words, I sent the email to John O'Brien and others, on 2 March, and John O'Brien marked up the email, with the track change, on 4 March whereby he removed the words, 'for security reasons' from the proposed clause.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2376

THE COMMISSIONER: Yes.

PN2377

MS DALTON-BRIDGES: Quoting:

PN2378

We then - we discussed the words, 'for security reasons' back and forth. Part of the reason the AVOs feel they are not free from duty during the unpaid meal break is due to the security reasons associated with being responsible for an armoured truck, wearing a visibly holstered firearm and being in uniform whilst accessing public food, retailers and public bathrooms during the unpaid meal break. Whilst out of the truck they are at far greater risk of attack.

PN2379

THE COMMISSIONER: I don't think he goes so far as to say he insisted. If we go to page 172, and I'm sure I did this before lunch, we have Mr O'Brien marking up a document, on 4 March, where he's saying, 'This is what was put by the TWU during the meeting of 3 March', where 'security reasons' is a strikethrough.

PN2380

MS DALTON-BRIDGES: And it's not clear who the strikethrough is done by, Commissioner.

PN2381

MR WILLIAMS: That's exactly - - -

PN2382

MS DALTON-BRIDGES: Because it's not - - -

PN2383

THE COMMISSIONER: He says, 'Marked up by JOB 4 March', he's done this. So the read is before the meeting.

PN2384

MS DALTON-BRIDGES: So he's taken out 'for security reasons'.

PN2385

THE COMMISSIONER: Because that's what the union asked for, and then on the - - -

PN2386

MS DALTON-BRIDGES: Well, I don't think that's contrary to what Troy is saying.

PN2387

THE COMMISSIONER: Well, do we need him back? Do we?

PN2388

MR WILLIAMS: Well, we will need to look at the transcript. I don't think Mr Fernandez's recollection was nearly that clear.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2389

MS DALTON-BRIDGES: Well, it's in his statement.

PN2390

THE COMMISSIONER: 16 March we have it back in and then we still don't land with the very same words.

PN2391

MS DALTON-BRIDGES: And when I - - -

PN2392

THE COMMISSIONER: It's because Mr Fernandez proposes something else in June.

PN2393

MS DALTON-BRIDGES: When I put to Mr Fernandez yesterday what 'security reasons' meant to him, that's when he explained what the crew members had said to him and why they are insisting on 'security reasons', but what 'security reasons' meant to them was totally different to what 'security reasons' meant to the respondent.

PN2394

THE COMMISSIONER: Well, he probably didn't ask the respondent, did he, what they understood, but anyway, I asked him if it was a freebie as well.

PN2395

MS DALTON-BRIDGES: Yes.

PN2396

THE COMMISSIONER: You can ask. Mr Jones wasn't there in 2016. He wouldn't know. Anyway, ask away, but please don't assert that it was Mr O'Brien because I can't be satisfied of that. You can put it as a question, but you can't assert it as a fact.

PN2397

MS DALTON-BRIDGES: All right. If we go to page 172 of the court book, Mr Jones, you will see that 'security reasons' have been struck out. We argue - and do you think it's reasonable - that Mr Jones would have struck out 'for security reasons' from the clause, given he was agreeing to the rest of the clause?

PN2398

MR WILLIAMS: None of that is established.

PN2399

THE WITNESS: I think you said my name. I wasn't there in 2016. All I can interpret is the provision as it - as it stood in April 2020 when I made an interpretation of 'security reasons' and what it meant - what it meant read contextually with other provisions in the agreement.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2400

MS DALTON-BRIDGES: However, you had no history, did you, of how it had come about? So your understanding of any negotiations that have occurred in 2016, what research had you done to satisfy yourself about that?---Well, the research - and I think it's set out in my witness statement - I asked the questions in relation to the one-ton truck, of what required payment with respect to employees having their lunch in the vehicle. My interpretation of clause 34.1, read contextually with 34.1.1, that being each employee is allowed an unpaid meal break of 30 minutes, and then 34.1.1, read contextually with that clause 34.1, my discussions with Narishen Naidoo, my discussions with Anthony Zagari, and then both of those two gentlemen informing me that there was no requirement for employees to have their lunch in a vehicle unless required to do so.

PN2401

MS DALTON-BRIDGES: If we can just go back to page 1012, please. So if we look at page 1012, and we look at the 2019 agreement, and we look at para - just let me make sure I have counted properly - 34.1.13. So:

PN2402

For the part of the meal break prescribed above employees will be paid at the rate of time and a half for a minimum of 15 minutes for security reasons.

PN2403

You just ignored that, Mr Jones?---No, I don't ignore that, and 'for part of the meal break prescribed above', and the meal break prescribed above is mentioned in clause 34.1:

PN2404

Each employee is allowed an unpaid meal break of 30 minutes -

PN2405

otherwise that provision has nothing to do - - -

PN2406

That's exactly right, Mr Jones?--- - - - based on your interpretation.

PN2407

It has nothing to do?---So with respect to that, well, it has something to do. If it doesn't have anything to do, otherwise it wouldn't be in the enterprise agreement. So when read in context - - -

PN2408

I will stop you there, Mr Jones?--- - - - with clause 34 - - -

PN2409

THE COMMISSIONER: No. He's entitled to finish his answer.

PN2410

MS DALTON-BRIDGES: Assume away, but continue.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2411

THE COMMISSIONER: Ms Dalton-Bridges, I have just issued a direction that he's entitled to finish his answer.

PN2412

MS DALTON-BRIDGES: Sure. Thank you, Commissioner.

PN2413

THE WITNESS: So as I was saying, when read in context with clause 34.1, and the remainder of 34.1.1, what stands out very clear are the words and the phrase 'security reasons', and the second part of 34.1.1, if we read it, when read in context:

PN2414

The part of the meal break prescribed by the clause be paid at the rate of time and a half for a minimum of 30 minutes for security reasons.

PN2415

Then one has to move down. I mean this provision wasn't constructed in the best of terms, but it is what it is, and to get that context one has to read down where it says:

PN2416

The employee will be paid at the rate of time and a half for time spent in the vehicle -

PN2417

I'm sorry -

PN2418

where employees are required to remain inside an armoured vehicle longer than 15 minutes.

PN2419

So there's two parts there. There's the first 15 minutes, and if you're required to remain in the vehicle longer than 15 minutes of the meal break, then you will be paid, again, at the rate of time and a half.

PN2420

MS DALTON-BRIDGES: I put it to you, Mr Jones, that there's nothing to connect staying inside the vehicle for 15 minutes with clause 34.1.13. So when you talk about staying in the vehicle - - -?---Well, I disagree.

PN2421

- - - for 15 minutes, there's nothing that connects those two clauses and, in fact, they're separated. If you're looking at how clauses are constructed, they're separated by a clause that says:

PN2422

If an employee is requested to work through their meal break they must be paid at the rate of double time until the commencement of their meal break.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2423

If they were connected in any way they wouldn't be separated by other clauses?---This is just - this is just poor - - -

PN2424

No?---This is just poor drafting.

PN2425

Mr Jones, I haven't asked you a question yet.

PN2426

THE COMMISSIONER: Well, don't make a statement that leads to the question. Ask questions, please, Ms Dalton-Bridges.

PN2427

MS DALTON-BRIDGES: So, Mr Jones, you have conflated in your mind that para 3 is connected to para 5, which then is connected to para 6. Is that what you're trying to tell us?---No, I haven't conflated anything. My interpretation of that provision to myself is very clear and the connection is real, and I say again, where an employee - - -

PN2428

To yourself?---Where an employee is required to remain inside an armoured vehicle longer than 15 minutes, that gives rise to what happens in the first 15 minutes and that's brought out and enlivened by para 3.

PN2429

That's exactly right, Mr Jones?---And the phrase 'security reasons'.

PN2430

Para 3 is totally independent, we would say, Mr Jones, but we will take it that that's your position. All right. So when you wrote to Mr Olson and you said, 'We're going to stop the meal break payment', you understood that the meal break payment was a totally different provision in Queensland to the lunch in truck that was around the rest of the country, but you still thought that you were going to be able to stop that without any consequences; is that correct, Mr Jones?---Well, in my role I never assumed that there would not be consequences. Generally when one writes stopping payments, when you say 'consequences' that in my - to my mind, means there could be possible disputation arising from that, and as has borne out in the recent dispute before Commissioner Lee and the dispute now before Commissioner Hunt, that has come to fruition.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2431

All right. So given that there was a risk of consequence, you still chose to move ahead rather than renegotiate the clause come the end of the agreement which was December that year. Mr Jones, would you like to tell us about that?---Sure. The reason for that is that my interpretation of the instruments - and there are eight road instruments - is that there was no need to wait for renegotiation. It was very clear, to my mind, that the only time a payment of lunch on - on a truck, or in the Queensland position, payment for a meal break, would only arise if employees

were required to have - if they were required to have their lunch in the vehicle or a meal break in the vehicle, so no need to wait for renegotiation of instruments.

PN2432

All right. So, again, we see this continuing to read words that weren't on the page, Mr Jones; is that correct?---No. I disagree with that proposition.

PN2433

I will take you to paragraph 8 of your statement, Mr Jones, and you say you have previously made a witness statement in the Fair Work Commission proceedings, C2021/7077 and C2021/1768, which relate to a similar dispute with the TWU. How do you see the disputes as similar, Mr Jones?---The similarity with the disputes is in relation to the payment of an allowance, or payment of a meal break in this particular matter, at a rate of one and a half if one is required to have lunch in an armoured vehicle or their break in an armoured vehicle. That's the similarity.

PN2434

All right. So despite the fact that this clause says nothing about a vehicle, let alone an armoured vehicle, or a direction - - -?---Well, I disagree. It does.

PN2435

Let me finish, Mr Jones - or a direction from the employer, you coupled in the Queensland entitlement to a paid meal break with the rest of the country; is that correct, Mr Jones?---No. I disagree.

PN2436

You disagree?---Yes.

PN2437

So in terms of that matter, can you see that the lunch on vehicle payments that were - and the matters that were contested before Commissioner Lee - are quite different to this matter?---No. I disagree.

PN2438

You disagree. All right. So the words are very different, but you think they're the same. Is that what you're saying, Mr Jones?---No. As I said before, the wording in each of the provisions arising from the enterprise agreements were different nearly in every case in relation to the eight Road Crew instruments. Now, I can't explain why that occurred. I wasn't around for the drafting of those particular provisions, but they were all related to having lunch or a break inside an armoured vehicle.

PN2439

However, you had no history of the understanding of the Queensland entitlement and how it came to be, did you, Mr Jones?---Well, my interpretation, again - and I think it's in my witness statement - was borne on about - about my interpretation of the relevant provisions arising from the Queensland instrument, and my discussions with Narishen Naidoo and Anthony Zagari.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2440

Neither of those people were involved in the 2016 negotiations, were they, Mr Jones?---That might be correct.

PN2441

All right. I want to take you to clause 38 in your statement, please, Mr Jones, and the last sentence where you say:

PN2442

During this period none of the TWU representatives or delegates or any crew members raised with me that the intention of the payment was to compensate crew members from being in public spaces with their firearms during their meal breaks. I first became aware of the TWU's contention in this regard when I read the TWU materials.

PN2443

Do you stand by that statement, Mr Jones?---I do.

PN2444

All right. On page 69 of the court book - if we could go to that, please - and I think I have gone a page too far. I'm sorry, 68. These are the minutes from, or the notes from the March 2019, and I understand this predates your involvement with the respondents, however, can you see there under 32.1.4 where it says 'meal break payment'?---Yes. It's shaded in blue. I can see that.

PN2445

Yes. Okay. So it's clear that the TWU - these are TWU meeting, post-meeting notes - the TWU was relating and discussing the meal break payment in 2019.

PN2446

MR WILLIAMS: Well, I'm sorry, it appears, in fact, to be an Armaguard, the claim. It says, 'ATU' in the left-hand margin, not TWU.

PN2447

MS DALTON-BRIDGES: It's a claim, but the document is not produced by Armaguard.

PN2448

THE COMMISSIONER: Are you trying to link this to his evidence at paragraph 38?

PN2449

MS DALTON-BRIDGES: I'm trying to link it to the fact that he said that he wasn't aware, and if he wasn't aware, had he not gone back and looked at any of the previous bargaining documents when he commenced in his role, Commissioner.

PN2450

THE COMMISSIONER: Well, this document is produced in this matter. How would Armaguard have this document?

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2451

MS DALTON-BRIDGES: Well, presumably because we had shared it, because there was no minutes coming out of Armaguard.

PN2452

THE COMMISSIONER: Presumably it was shared?

PN2453

MS DALTON-BRIDGES: Yes.

PN2454

THE COMMISSIONER: How would we - - -

PN2455

MS DALTON-BRIDGES: With Armaguard.

PN2456

THE COMMISSIONER: How would we presume that?

PN2457

MS DALTON-BRIDGES: Because Mr Hurndell says that he shared his meeting minutes with the employer because we couldn't get - - -

PN2458

THE COMMISSIONER: I'm sorry. Mr Jones, in 2021, is he going back, is he, to the 2019 bargaining minutes? Is he?

PN2459

MS DALTON-BRIDGES: Well, we do, certainly, Commissioner.

PN2460

THE COMMISSIONER: Well, you can ask him if he did, because his evidence - - -

PN2461

MS DALTON-BRIDGES: Well, that was where I was getting to, Commissioner.

PN2462

THE COMMISSIONER: His evidence is 'During this period none of it was raised with me.'

PN2463

MS DALTON-BRIDGES: Pardon?

PN2464

THE COMMISSIONER: He says, 'None of them raised with me that the intention of the payment'. That's his evidence. If you want to talk about has he done any research, I suggest you ask that.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2465

MS DALTON-BRIDGES: Well, Mr Jones, have you done any research as to what the meal break payment was being called by the negotiators during the 2019 negotiation?---As I said, my interpretation of the payment for meal breaks in the Queensland instrument was not in relation to the provisions contextually within that instrument, and my discussions with Narishen Naidoo and Anthony Zagari. This document here I hadn't seen until the application or the submissions, the TW submissions, were tendered to the Commission and the accompanied witness statements.

PN2466

All right. So you're saying the people who informed you were people who were not involved in the negotiations in 2016, and they were the people who, in turn, informed you?---Well, my - and it's in my witness statement, again, where I talk about my - before I constructed the letters to go to the relevant branch secretaries, on or about 8 July, my interpretation of whether there was a requirement to pay for the meal break in the Queensland matter was based on my interpretation of clause 34.1 and 34.1.1, and my discussions with Narishen Naidoo and Anthony Zagari.

PN2467

All right. So it stands that the people you're talking to had not been involved in the 2016 negotiations where the clause had emanated from, nor had they informed you about any discussions in the 2019 enterprise agreements. Would that be correct?---Well, in relation to the 2016 negotiations, that could be correct, that they weren't involved in the negotiations. The 2019 agreement, I don't know who was involved in those particular negotiations.

PN2468

So in terms of the 2019 negotiations, you're not sure who was involved with those either?---No.

PN2469

No. All right. So the people you're speaking to really have no knowledge of anything?---Well, they have knowledge in relation to the security requirements for employees either being required to have their lunch in a vehicle or meal break in a vehicle - - -

PN2470

Only if - - -?--- - - - from an operational and security perspective.

PN2471

Only if you accept that security reasons can only be mooted by the respondent?---No, 'security reasons' obviously appears in the current industrial instrument and it appeared in the 2019 industrial instrument, and security reasons would also have to be qualified by someone of the like or the ilk or the standing of Andrew Zagari who heads up security.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2472

We would argue, Mr Jones, they do not, and under the Work Health and Safety Act we would certainly argue that that's not the case. I would like to take you to Blake Byrne's statement, please, and the attachment to Blake Byrne's statement. So it's on page 608 of the court book. Now, I understand, Mr Jones, that you were around for the 2022 negotiations. Is that correct?---Well, I was certainly employed, yes.

PN2473

You were certainly employed and your name is here on meeting 4 as it relates to 19 July 22, which is a Tuesday at 6.40 pm. Now, your understanding about these minutes or outcomes of these meetings, have they been - - -?---I'm sorry, just in relation to that, you said my name is there and I can't see that on the screen.

PN2474

I'm sorry, you can't either. It's just coming up now. There it is.

PN2475

THE COMMISSIONER: Who is driving this?

PN2476

MR WILLIAMS: Mr Gleeson.

PN2477

THE COMMISSIONER: You are. All right. Thank you.

PN2478

MS DALTON-BRIDGES: And he's doing a very good job. Thank you, Mr Gleeson.

PN2479

So you will see there, Mr Jones, meeting 4?---Yes.

PN2480

Now, with these particular set of notes, were these ever provided to the TWU?---I'm not sure.

PN2481

All right. So they're not confirmed in any way as confirmed minutes of a meeting?

PN2482

THE COMMISSIONER: Mr Byrne says he didn't.

PN2483

MS DALTON-BRIDGES: Pardon?

PN2484

THE COMMISSIONER: Mr Byrne says he didn't provide them to them.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2485

MS DALTON-BRIDGES: Okay. All right.

PN2486

I will just take you over the page then to page 608 and it says at the top of 608 - and this is the salient line:

PN2487

The TWU will withdraw claim 15 pending an offer from the company.

PN2488

Now, claim 15, of course, is related to the paid meal break. What's your recollection of - - -

PN2489

THE COMMISSIONER: Let's take him to exactly what it is, thanks, Ms Dalton-Bridges.

PN2490

MS DALTON-BRIDGES: What's your recollection?

PN2491

I'm sorry, you would like me to take him to that in the - - -

PN2492

THE COMMISSIONER: It should be 555.

PN2493

MS DALTON-BRIDGES: Okay. Well, I have got it on 567.

PN2494

THE COMMISSIONER: 556. 556 at 15. Thank you.

PN2495

MS DALTON-BRIDGES: On page 567. Are we happy?

PN2496

THE COMMISSIONER: No, 556.

PN2497

MR WILLIAMS: 556. That's it.

PN2498

THE COMMISSIONER: There we go. The reinstatement paid meal breaks.

PN2499

MS DALTON-BRIDGES: Well, I have also got it on page 567.

PN2500

THE COMMISSIONER: Yes, but this is the log of claims on the TWU letterhead.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2501

MS DALTON-BRIDGES: I'm not sure that I want the log of claims from the TWU letterhead.

PN2502

THE COMMISSIONER: All right. Well, you can move across to the table then if you like.

PN2503

MS DALTON-BRIDGES: Pardon?

PN2504

THE COMMISSIONER: Move across to the table then if you like.

PN2505

MS DALTON-BRIDGES: So if we go to page 567, please. So this is claim 15 - and it's been put again by the respondent, so it's not something that's an agreed document - and it says:

PN2506

The reinstatement of paid meal breaks to be required to be taken inside vehicles -

PN2507

and the comment on that, so the clarification is -

PN2508

Lunch on truck to be reinstated (paid meal breaks). Will send a revised lock dealing with this revision. Essentially want meal breaks paid, and this has been rejected by the company as per the current enterprise agreement terms. Unpaid meal break unless directed to eat in the truck.

PN2509

So this is - I'm not sure who has made the particular comments on here - but the point that I did want to take you to was 15 is in relation to paid meal breaks, and then if we return to the previous page that we had highlighted, which is where it says, at meeting 4, which is the annexure to Mr Byrne's statement, that he says:

PN2510

The TWU will withdraw claim 15 pending an offer from the company.

PN2511

and that's page 608. What's your recollection of that, Mr Jones?---None.

PN2512

Yes, because the TWU has none either, so - - -?---No. When I said I had no recollection of meeting 4, I mean I have been involved in so many meetings around the negotiation of enterprise instruments that my mind is not that capable of remembering such a meeting.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2513

All right?---I can only see what's on the paper there.

PN2514

Okay. So 19 July 2022, so it's around the time that you're going - well, it's after you have withdrawn the payment. I would have thought - - -?---No. The payment was withdrawn - - -

PN2515

In 21. August 21?--- - - - on August 21.

PN2516

So that's what I mean, it's after that. So I would have thought while we - - - ?---No, I just thought you said then - I'm sorry - I just thought you said then that the meeting was August 22.

PN2517

THE COMMISSIONER: It was 20 July 2022.

PN2518

MS DALTON-BRIDGES: Yes. I'm sorry, 20 July 22, and the payment had been withdrawn on 21 August 21, so it's after the payment has been withdrawn. I would have thought that a TWU supposed claim to withdraw a paid meal break claim would be pretty significant in someone's mind at a meeting?---If I have read these documents that you have put up to me correctly, they were asking for the paid meal break or having a meal break inside the armoured vehicle to be reinstated.

PN2519

They began with a claim for a paid meal break and they amended that to ensure it was a paid meal break for 15 minutes. There was nothing to do with a vehicle.

PN2520

MR WILLIAMS: Well, we don't know that.

PN2521

THE WITNESS: That's not what I read in the claim.

PN2522

MS DALTON-BRIDGES: That was the initial claim.

PN2523

MR WILLIAMS: No.

PN2524

THE COMMISSIONER: Well, we have gone back and it says 'reimbursement'. We won't do that again, but that is what's being put. It's been put to you it's pretty fundamental. It's a sizeable chunk of money. Can you not remember that, Mr Jones?---I do, Commissioner, and as I wrote in that letter, that that payment would stop in - - -

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2525

No, but can you not remember the 2022 meeting?---Not specifically, no.

PN2526

Are you across any PABO that make its way to Linfox Armaguard?---From time to time I am, Commissioner, yes.

PN2527

Do you typically manage them or does somebody else manage them?---It depends where they fall. I don't tend to manage many of them at all. Members of my team do.

PN2528

All right. Ask away. Thanks, Ms Dalton-Bridges.

PN2529

MS DALTON-BRIDGES: So I was just checking whether that was significant in your mind because certainly the TWU says that's not their evidence.

PN2530

MR WILLIAMS: Well, that's not a fair summary of about an hour of evidence about this issue at all.

PN2531

MS DALTON-BRIDGES: We will put in submissions our position.

PN2532

THE COMMISSIONER: Well, it wasn't really clear what Mr Wilkinson was saying about that. He doesn't think it was withdrawn, but we know that the next day he wrote that it was parked.

PN2533

MS DALTON-BRIDGES: But 'parked' means a very different thing to 'withdrawn', Commissioner - - -

PN2534

THE COMMISSIONER: Sure, but - - -

PN2535

MS DALTON-BRIDGES: - - - and I guess I work with Mr Wilkinson.

PN2536

THE COMMISSIONER: Yes.

PN2537

MS DALTON-BRIDGES: I understood - and that was my frustration with trying to get the clarity around them - I understand what he means.

PN2538

So, Mr Jones - - -

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2539

THE COMMISSIONER: I'm glad you do, Ms Dalton-Bridges.

PN2540

MS DALTON-BRIDGES: Pardon?

PN2541

THE COMMISSIONER: I'm glad you do. I will be left with the transcript and any notes that I have here.

PN2542

But we have learnt from you, Mr Jones, that you can't recall that position that the claim was withdrawn?---I can't recall, Commissioner.

PN2543

Who normally writes notes at these sorts of meetings?---Well, I don't, Commissioner. I'm not sure.

PN2544

MS DALTON-BRIDGES: So you were at that meeting, Mr Jones, but you can't surmise.

PN2545

Would you mind, Mr Gleeson, if we could go back to the attendees. Who would have been the likely notetaker?

PN2546

THE COMMISSIONER: It's in paragraph 17 at 549. Mr Byrne says it's him. No, in terms of the meeting notes, I don't know.

PN2547

MS DALTON-BRIDGES: Yes. In terms of the meeting notes.

PN2548

THE COMMISSIONER: In terms of the positions, that's Mr Byrne, and he says that at 17.

PN2549

MR WILLIAMS: His evidence is at 24 in relation to that.

PN2550

THE COMMISSIONER: Twenty-four. I attended. We don't know who. We'll have to ask him?---Yes.

PN2551

Right. You don't know? Do you know who typically is a note-taker in meetings, Mr James? Who would it be? It's not you?---No. Not me, Commissioner. I honestly can't recall.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2552

Well, there's Byrne, Jones, Watt, Smit and Naidoo. Sorry, and James – I don't know why James is at the top. You don't have another James Wilkinson do you?

PN2553

MS DALTON-BRIDGES: No

PN2554

THE COMMISSIONER: No. Right. So, Mr Naidoo, is he a note-taker?---So I think it was put to me that this was part of Mr Byrne's witness statement. Is that correct?

PN2555

MS DALTON-BRIDGES: Yes.

PN2556

THE COMMISSIONER: It is. But he doesn't say who wrote it?---Right.

PN2557

MR WILLIAMS: He is coming along shortly of course.

PN2558

THE COMMISSIONER: Yes?---Well, I can't speculate, Commissioner. Sorry.

PN2559

MS DALTON-BRIDGES: Right. So just to sum up, Mr Jones, if we go back to page 1012. For part of the meal break prescribed above employees will be paid at the rate of time and a half for a minimum of 15 minutes for security reasons. You believed you could stop that payment, Mr Jones, which you did on the 21 August 2021?---Yes. Because they weren't required to have their meal break inside an armoured vehicle.

PN2560

And you believe that those words are somewhere impugned in that clause?---No. Contextually written – they are contextually new words together with other words within clause 34.1.1.

PN2561

Right. So you've created connections between additional clauses to satisfy yourself?---No, I haven't. I mean that's what it's expressed there.

PN2562

As I say you've created connections that satisfy yourself because they don't satisfy others, Mr Jones.

PN2563

MR WILLIAMS: Well, who are the others?

PN2564

THE WITNESS: Well, that's why I suppose we're here today in arbitration.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2565

MS DALTON-BRIDGES: That's right?---My interpretation of this instrument we made in April 2020 was very clear.

PN2566

So despite not knowing the genesis or background of the clause that was your position?---That is my interpretation of that provision and other provisions contained within the agreement when read contextually with each other.

PN2567

Thank you. Thank you, Mr Jones.

PN2568

THE COMMISSIONER: No further questions? No further questions, Ms Dalton-Bridges?

PN2569

MS DALTON-BRIDGES: No further questions, Commissioner.

PN2570

THE COMMISSIONER: Right, thank you. Anything arising?

PN2571

MR WILLIAMS: No. Nothing arising, Commissioner. Thank you.

PN2572

THE COMMISSIONER: All right. Well, Mr Jones were you on notice for the 2022 agreement that this is a bit of a shambles and the words could be better?---Like, was I on notice?

PN2573

Yes. I mean it's a dog of a clause and there's no formatting. Were you happy with this clause to live in 2022, were you?---I suppose in the cut and thrust of negotiations, for whatever reason, it was decided to continue and roll over.

PN2574

Well, what did you understand? There's the company's minutes say – can we lose – you probably can't do that, can you?

PN2575

MR WILLIAMS: We can.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2576

THE COMMISSIONER: You can lose – right, so the company's minutes suggest that the request for reinstatement of the payment was withdrawn on the 20 July. That's the company's position. Whether it's agreed with the union is otherwise. We have learned that Mr Wilkinson swears the statutory declaration the next day saying, essentially, it's put to the side whilst the bargaining continues. It appears it didn't come up again and the agreement was rolled over. So was there any thought given by the company to improve that clause?---No need really,

Commissioner, to improve that clause. I mean I accept it's not the most well drafted provision but the company was comfortable that there was no requirement to pay for a meal break unless employees were required to have that meal break or part of a meal break inside an armoured vehicle. And we were quite comfortable putting aside – the drafting could have been better – that that's – that would be the position going forward and we still rely on that position today.

PN2577

Well, there was a lot of grumbling from employees when you took it away in August 2021?---Correct. There was, Commissioner.

PN2578

We know that through Mr Naidoo's statement. Didn't that provide a bit of unsettling thoughts that people are a bit upset about this and could we tighten it up?---Yes. I understand and the company understood at the time that people weren't going to be entirely happy about having that allowance or payment taken away that we, and well today felt that we were well within our rights to do so unless we required them to have their break inside an armoured vehicle.

PN2579

All right. Now, I appreciate you didn't come into this until 2020 but now that you know more than you did then, in 2015 and earlier there's – the words are quite tight – and say that you get the payment if you're directed to eat your lunch in a vehicle. And the business was paying it anyway, weren't they?---My understanding, Commissioner, I mean obviously I wasn't at Armaguard in 2015 but my understanding is that the company has for whatever reason been paying, making these payments administratively for some time, yes.

PN2580

Okay. So then in 2016 the company wants to do away with it and this clause is recreated. Mr O'Brien says they don't get anything. And I've heard, well, Mr Fernandez was the one writing the clause. Do you think there was a winner or a loser out of the 2016 agreement with that clause?---Well, not having been at the negotiations it's hard to say what was in the minds of those individuals. But what came out of that is the clause that we're dealing with here, being 34.1 and 34.1.1 and as I said on numerous - - -

PN2581

What's the result for the business and the employees as – due to the 2016 wording? I mean I put it to the witnesses – well, the employees were getting it anyway and they weren't at risk of losing it back then, because nobody was checking to see if they were in the vehicle or not. And that's how it played out through the life of the 2016 agreement. So is there a winner? I mean does anybody get an upper hand out of that drafting?---I agree, Commissioner.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2582

Because there was no inclination from the business. You know, it was being paid throughout the whole life of the 2016 agreement. Nobody was thinking, 'Gee, you know, this is a cost-saving opportunity.'?---That may be the case, Commissioner.

And as I think it may have been inferred or said in my witness statement. I mean I came to Armaguard in 2020 and that one of the things that were put to me is about lunch on truck. Is there a requirement to pay that? And upon examination of the instruments and having discussions with Narishen Naidoo and Anthony Zagari it was discovered that there was no reason to be directing or requiring people to have their lunch on a vehicle and as a consequence of that decision was made and last month reading interpretation of instruments to stop that payment. I mean it was the facts are it was paid administratively, whether people were having their lunch on truck or whether they weren't and this was a significant cost saving to the business, as you're aware, and it's probably in our submissions, Armaguard is in dire situation at the moment. It's losing over a million bucks a week and these were just decisions that were made in order to increase efficiency and try and save this business.

PN2583

Well, you've done it nationally and I think you say you've satisfied yourself that looking at all of the agreement clauses you can do so but might you be wrong in respect of Queensland?---No.

PN2584

You don't have any doubt about that clause?---I don't.

PN2585

Well, do you think it's ambiguous or not?---And I form that view in - - -

PN2586

Because it's been put in submissions that it's ambiguous and that's why we're going to look at extraneous material. If it's not ambiguous I deal with the words on the paper. So what is it? Is it ambiguous or not?---To me that – to me it's not ambiguous - - -

PN2587

Well, that's not - - -?---- - - because that 34 - - -

PN2588

- - - the submissions is it?

PN2589

MR WILLIAMS: No, Commissioner. To be transparent the submission is that it's ambiguous.

PN2590

THE COMMISSIONER: Yes.

PN2591

MR WILLIAMS: And that we haven't wasted two days of evidence. It's very clear that this witness has a strong view about it and he explained that view.

PN2592

THE COMMISSIONER: Yes.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2593

MR WILLIAMS: And, of course, I respect it.

PN2594

THE COMMISSIONER: I just want to make sure that I've read clearly your submissions.

PN2595

MR WILLIAMS: The company's position is that from a legal technical point of view it is ambiguous.

PN2596

THE COMMISSIONER: Thank you. All right. So, Mr Jones, you're giving evidence, are you, that it's not ambiguous?---I'm giving evidence at the time when I read that provision in April 2020. It was not ambiguous to me when you read it context with the other provisions in the agreement.

PN2597

Well, I am asking you now. Do you think it's ambiguous?---I would still form the same view.

PN2598

Well, you know, saving a fair amount of dime across the country but Queensland is a little bit different. Right?---That's correct, Commissioner. It is.

PN2599

And you have had a win out of the ACT/VIC matter. But the words are different in Queensland?---Correct, Commissioner. They are.

PN2600

Are you negotiating the agreement?---I mean I could see how - - -

PN2601

Sorry, you go?--- - -I could see how the people could have see that as ambiguous but I mean the facts are the facts. When I interpreted that provision back in April 2020 and subsequently noted the decision to write to the Branch secretaries. In that correspondence to Richard Olsen - - -

PN2602

You mean 2021?---Yes. I mean when I went over to Armaguard in April 2020 I read the industrial instruments and obviously it took some time to get the ball rolling with respect to removing that payment, hence the letter has come about in July 2021. But, you know, my interpretation of the Queensland provision on one of the other instruments were and at the time and still are that if one wasn't required to have their lunch in an armoured vehicle then a payment wouldn't arise.

PN2603

Are you negotiating a new agreement now that we have met the nominal expiry date?---Not at the moment. Negotiations have been commenced though.

*** DARREN JONES

XXN MS DALTON-BRIDGES

PN2604

Do you propose to rewrite that clause?---It depends on – so negotiations haven't commenced at this time and with, you know, speaking fairly Commissioner, with the merger of Prosegur, which is going to take effect in September a lot of thought will have to be given in relation to the instruments that will be constructed going forward.

PN2605

I wasn't aware - - -?---And we haven't turned our mind to that yet.

PN2606

I think the material filed a little while ago said that was still subject to ACCC approval. But that's happening is it?---The ACCC has approved the merger and the merger will take effect on 1 September.

PN2607

So you're going to have all these transferring instrument issues?---I won't make any comment about that at this stage, Commissioner.

PN2608

Don't know. Right. Okay. All right. Anything arising out of that Ms Dalton-Bridges?

PN2609

MS DALTON-BRIDGES: No, thank you, Commissioner.

PN2610

THE COMMISSIONER: Anything Mr Williams?

PN2611

MR WILLIAMS: Not from me, Commissioner. Thank you.

PN2612

THE COMMISSIONER: All right. Thanks, Mr Jones for giving your evidence. You're now free. Thank you?---Thank you, Commissioner.

<THE WITNESS WITHDREW

[3.09 PM]

PN2613

THE COMMISSIONER: Would you like a convenience break, parties? No?

PN2614

MR WILLIAMS: If anyone else wants one of course but I am personally fine.

PN2615

THE COMMISSIONER: You do, Ms Nguyen. All right. Let's just break for five minutes. Thanks everyone.

SHORT ADJOURNMENT

[3.09 PM]

*** DARREN JONES

XXN MS DALTON-BRIDGES

RESUMED

[3.15 PM]

PN2616

MR WILLIAMS: Commissioner, I have two more witnesses. One of them, Mr Walsh, who is not required for cross-examination. So I assume – the rest of his statement will be tendered.

PN2617

THE COMMISSIONER: Yes.

PN2618

MR WILLIAMS: But I call Blake Byrne as my last witness who is required for cross-examination.

PN2619

THE COMMISSIONER: Very good, thank you.

PN2620

THE ASSOCIATE: Thank you, Mr Byrne. Can you hear me?

PN2621

MR BYRNE: Yes, thank you.

PN2622

THE ASSOCIATE: We'll take an affirmation but before we do could you please state your full name and address?

PN2623

MR BYRNE: Blake Byrne, (address supplied).

<BLAKE BYRNE, AFFIRMED

[3.16 PM]

EXAMINATION-IN-CHIEF BY MR WILLIAMS

[3.16 PM]

PN2624

MR WILLIAMS: Mr Byrne, you can hear me okay?---Yes, thank you.

PN2625

Could you state your full name for the record, please?---Blake Byrne.

PN2626

And Mr Byrne, you're employed by Linfox Australia Pty Ltd as Workplace Relations Manager?---That's correct.

PN2627

A role you've held since 1 September 2021?---That's correct.

PN2628

Yes. And Mr Byrne, you've made a statement in connection with these proceedings. Is that correct?---That's correct.

*** BLAKE BYRNE

XN MR WILLIAMS

PN2629

Do you have a copy of it with you?---I do.

PN2630

And as I read your statement, your evidence is really limited to negotiations for the 2022 rollover agreement. Is that right?---Yes.

PN2631

Mr Byrne, are the matters of fact set out in your witness statement true and correct to the best of your knowledge and belief?---Yes.

PN2632

Thank you, Mr Byrne. You will be asked some questions in cross-examination. There is a digital court book which has your statement and a lot of other material in it. If you're asked questions by reference to that either by the cross-examiner or by the Commissioner we'll share the screen and you will have it in front of you?---Thank you.

PN2633

Thank you.

PN2634

THE COMMISSIONER: Mr Williams, did you want to ask questions about the minutes or do you want to leave that to - - -

PN2635

MR WILLIAMS: Well, Commissioner, I'm completely satisfied with Mr Byrne's evidence as it stands.

PN2636

THE COMMISSIONER: All right. Well, one of us is going to ask him.

PN2637

MR WILLIAMS: I know it's going to be asked but I am happy with the evidence.

PN2638

THE COMMISSIONER: All right. Very good. You will be asked questions now in cross-examination. Thank you.

CROSS-EXAMINATION BY MS NGUYEN

[3.18 PM]

PN2639

MS NGUYEN: Hello, Mr Byrne, can you hear me?---Very faint.

PN2640

Very faint?---That's better. That's much better now.

*** BLAKE BYRNE

XXN MS NGUYEN

PN2641

That's better. Okay. Great. My name is Phuong Nguyen. I am just going to ask you some questions about a couple of matters in your statement. Just to clarify, so

firstly at paragraph seven. So you were involved in negotiations for the 2019 agreement and the 2022 agreement. Is that right?---No, I was involved in the 2022 agreement.

PN2642

So not the 2019 agreement?---No. That's just the 2022 agreement.

PN2643

Okay. Sure.

PN2644

THE COMMISSIONER: Is that incorrect in your statement then, Mr Byrne?---Sorry - - -

PN2645

MR WILLIAMS: I think it's correct.

PN2646

THE COMMISSIONER: To replace – right?---Yes. To replace.

PN2647

Sorry, yes?---Yes, right.

PN2648

MS NGUYEN: I beg your pardon – to replace. Okay. So you weren't involved in the 2019 agreement or the 2016 agreement?---That's correct. I wasn't.

PN2649

Could I then take you to attachment BB9 to your witness statement? So it's page 606 to 608 of the digital court book?---Yes, I'm looking at bundle here BB9. Yes.

PN2650

So can I ask you do you know who prepared this document – the (indistinct) minutes?---James Watt who was the HR business partner for Queensland who now no longer works for Armaguard.

PN2651

So, Mr Watt. Can I take you to page 608? So it's just the last page of that document?---Sorry, that's got two lines of writing. Is that correct?

PN2652

Yes. Yes. So at the top it says, "TWU will withdraw 2015 pending an offer from the company."?---Yes.

PN2653

Would you happen to remember who said that in the meeting?---Look, to the best of my recollection James Wilkinson was doing the bulk of the talking with respect to the negotiations. So I believe it would have been James Wilkinson.

*** BLAKE BYRNE

XXN MS NGUYEN

PN2654

But you're not 100 per cent sure?---To the best of my recollection it would have been James Wilkinson.

PN2655

Sorry, Mr Byrne, were these minutes given to the TWU at any stage?---I'm not sure. I didn't prepare them.

PN2656

So you're not sure if they were given and if the TWU indicated they agreed with the contents of the document?---I didn't send them to the TWU.

PN2657

So you're not sure?---I didn't send them.

PN2658

Could I then take you – sorry, to paragraph 31 of your statement?---Yes.

PN2659

Okay. And it's here I think you just attached some documents that were filed before the Fair Work Commission as part of the approval application so you have attached the Form 16 and the Form 17?---Yes.

PN2660

Yes. And then just going to the next page to paragraph 32 and particularly at subparagraph (a) you've said that there was a BOOT analysis that was attached to the Form 17 and that's annexure 'A'?---Yes. That's what it says.

PN2661

Yes. And so that actual document the BOOT analysis is that exhibit BB15?---Yes.

PN2662

And then at paragraph 33 you extract the award provision about breaks being taken inside the armoured vehicles. Do you see that one?---Yes. That's what it says.

PN2663

Yes. And then at paragraph 34 you say that the BOOT analysis referred to at that paragraph 32(a) it does not refer to the lunch in truck payment made to employees as being a term in the 2022 agreement more beneficial than the award. And then equally none of the other material that was distributed to the employees talks about the agreement provision being that in the award provision? Is that right?---You might need to ask that again. There was a lot in that question.

PN2664

So I am just reading paragraph 34?---Yes.

*** BLAKE BYRNE

XXN MS NGUYEN

PN2665

So you say that the BOOT analysis it does not refer to the lunch in truck payment made to employees as being a term in the 2022 agreement as being more beneficial than the award?---Yes, that's the observation I made - - -

PN2666

That's correct?---- - - and that's what's in my statement.

PN2667

Yes. Cool. And then you go on to say that equally none of the other (indistinct) distributed to employees also contemplated that the lunch in truck payment was an entitlement not provided for under the CIT Award?---That's what my statement says.

PN2668

Great. Okay. Could I take you to page 884 of the digital court book?---I don't actually have the digital court book with me. I have my statement with me and annexures. So I can – if it's one of those documents I can turn to that now alternatively.

PN2669

MR WILLIAMS: Mr Byrne, we'll share that digital court book with you.

PN2670

THE WITNESS: Yes.

PN2671

MS NGUYEN: If you want to scroll down a bit. Sorry. There you go. Do you see subparagraph (f) there? Of travelling allowances?---Yes.

PN2672

Yes. So this was a provision award that says if an employee is required to travel and (indistinct) an employee is unable to return home at night must be paid the expenses reasonably incurred in travelling. So the minimum amount payable is \$45.70?---M'mm.

PN2673

And then if you just scroll down there's further provisions that say – sorry, if you want to scroll to here. The last two provisions relating to the allowances say that if an employee is prevented from returning with (indistinct) they must be paid any travelling expenses incurred at ordinary rates for the time that they reasonably take to get home. The overtime rate would ordinarily take you to get home from the yard (indistinct) garage. And then the third provision says where an employee transfers an employee – where an employer transfers an employee after the (indistinct) from the place from which the employee usually works from that place (indistinct) must be paid by the employer to the employee (indistinct) by the employer. Now if it's also possible we'd like to show you the 2022 agreement?---M'mm.

*** BLAKE BYRNE

XXN MS NGUYEN

PN2674

MR WILLIAMS: Just take a moment while we're sharing the document.

PN2675

MS NGUYEN: 27.2. So do you see clause 27.2 there? Travelling allowances?---Yes. I can see it on the screen.

PN2676

Yes. So that's part of the 2022 agreement and it says that –

PN2677

'An employee engaged in travelling on duty or on work on which the employee is unable to return to his home at night will be reimbursed (on production of receipts) expenses incurred for accommodation and reasonable meals. Alternatively, Armaguard may arrange and pay accommodation and reasonable meals expenses directly to the provider.'

PN2678

Do you see that?---Yes.

PN2679

Yes. And then if you go down – if you stop there. In 27.2.2 reads that –

PN2680

'In addition to the reimbursement or provision of accommodation and reasonable meals employees will be entitled to a travelling allowance as specified in Appendix A for each night employees are unable to return home.'

PN2681

THE WITNESS: Yes. That's what it says.

PN2682

MS NGUYEN: And then we see – yes, see that one? And then we see 27.2.3 –

PN2683

'An employee who is prevented from returning with the employee's armoured vehicle to the yard, depot or garage from which the employee started must be paid any travelling expenses incurred, and as if for time worked for the time the employee reasonably takes to get home beyond the time it would ordinarily have taken to get home from the yard, depot or garage.'

PN2684

And then we see in 27.2.4 –

PN2685

'Where Armaguard transfers an employee, after the employee commences work from the place from which the employee usually works to another place, fares to and from the altered place must be paid by Armaguard to the employee, except when transported by the employer.'

PN2686

And then lastly –

*** BLAKE BYRNE

XXN MS NGUYEN

PN2687

'The allowance will be increased in line with the wage increases provided for in the agreement.'

PN2688

So you see those provisions?---Yes.

PN2689

Yes. So it's fair to say – would you say that 27.2.3 is identical or nearly identical to the provision and award which is subclause (f) subclause (2)?---They're very similar. They could potentially be exactly the same. I don't have them next to each other. But the rest are very similar. I accept that.

PN2690

Yes. And I'm assuming that 27.2.4 again seems quite similar to paragraph (f)(3) of the Award?---Yes. Similar. I don't have them next to each other. But, yes from – yes.

PN2691

But then when we get up to 27.2.1. Sorry, if you want to – if we can just scroll down a bit so that we can see both 27.2.1 and 27.2.2? So in the agreement it appears that the employees they get reimbursed for expenses incurred for accommodation and reasonable meals, unless of course Armaguard arranges for the accommodation and reasonable meals. And reasonable meals to be provided. But then in addition to that reimbursement they also get a travelling allowance accessed by the Appendix X. So it seems that they get two things?---I mean that's what the clause says. Yes, I can see. I can read the clause, yes.

PN2692

Okay. And then if you scroll down to Appendix A of the Award? And if you want to keep scrolling down to where it says 'Allowances'. So looking at the travel daily allowance. It seems that then they get an extra \$113.56 on top of the reimbursements?---That's what it says, yes.

PN2693

Yes. Okay, for sure, but if you recall the equivalent provision in the award, it says in subclause (i):

PN2694

If they're required to travel on duty on work where the employee is unable to return home at night they must be paid the expenses reasonably incurred in travelling. The minimum amount payable is \$57.12.

PN2695

So it seems, under the award, they really only get the one payment?---Yes. That's what the award says.

*** BLAKE BYRNE

XXN MS NGUYEN

PN2696

So it seems that the agreement provision is more beneficial than the award provision would you say?---Yes.

PN2697

But if we then go to Annexure BB15. So this is the boot analysis that was attached to the form 17, isn't it?---Yes.

PN2698

So you can see that it talks about wage increases and rates, superannuation, delegates rights, redundancy pay and then three times 30 minutes at communication meetings?---Yes.

PN2699

Yes?---Yes. I'm sorry. Yes, I can see that's what it says.

PN2700

Yes, and so these are what the company has stated are more beneficial terms, but that travel allowance payment in the agreement, that doesn't feature in that document, does it?---No, it doesn't.

PN2701

So it's reasonable to say that maybe the company hasn't captured all of the more beneficial items?---I don't know. I didn't construct this document. I was on leave when it was constructed so I couldn't talk to what was in the mind of those people that constructed this document.

PN2702

But you agree that there is a more beneficial item that's not in that document?---The payment in addition to reimbursement is more beneficial than the award.

PN2703

Okay?---Yes. That's what it says.

PN2704

But it doesn't feature in this document that the company has prepared saying that these are the more beneficial items?---No, it doesn't.

PN2705

So it appears that there may have been some that are missed?---Well, yes.

PN2706

I didn't have any further questions. Thank you.

PN2707

THE COMMISSIONER: All right.

PN2708

Anything arising, Mr Williams?

*** BLAKE BYRNE

XXN MS NGUYEN

PN2709

MR WILLIAMS: There's nothing arising. I know this is slightly unorthodox, but, Commissioner, as I said, I'm perfectly satisfied with Mr Byrne's evidence in

relation to Annexure 4, which is the minute, that minute. It wasn't challenged, so I will be making a submission that if it's not challenged then his evidence has to stand. Now, that's an observation.

PN2710

THE COMMISSIONER: I'm sorry, that it wasn't challenged?

PN2711

MR WILLIAMS: It wasn't challenged in cross-examination, so - - -

PN2712

THE COMMISSIONER: In respect of what?

PN2713

MR WILLIAMS: The accuracy of the record.

PN2714

THE COMMISSIONER: All right.

PN2715

Well, Mr Byrne, what do you recall from that meeting on 20 July?---It was - - -

PN2716

You said James Wilkinson was doing the bulk of the talking?---Yes.

PN2717

And to the best of your recollection it would have been James Wilkinson who made that statement, but can you remember a statement being made to the effect that the claim was being withdrawn?---So from what - my recollection of that meeting was there was a - there was a desire to get a deal done because there was - there was impending, I believe - and I have to - I would have to just double-check my statement - but I was about to go off on leave or I - I was about a week away from going off on leave, which was meeting 4. The PABO application - I'm sorry, I'm just getting this right. Yes, 20 July was the meeting. So I was just trying to get that right. I was in - I was due to go off on leave and the conversation really centred around, well, what's the best commercial offer? What's the best commercial offer that can be put on the table in order to get a deal done, and there was a lot of toing and froing between the parties with respect to, 'Well, you have still got a significant amount of claims that are open. It's very hard for us to put our best foot forward', and there was a series of claims that were then subsequently dropped. From the best of my recollection, the lunch in truck payment was one of those on the basis that the employees wanted to recoup some money that was lost, and that was really the crux of the conversation that went back and forth.

PN2718

All right. Well, you don't go on leave until 22 August 2022 according to your statement?---Correct.

*** BLAKE BYRNE

XXN MS NGUYEN

PN2719

So your witness statement accurately reports that:

PN2720

A first protected action ballot order application was made. I dismissed that application in July.

PN2721

There was a meeting about to occur on 11 July. That's the third bargaining meeting. You're not present in that meeting?---That's correct.

PN2722

But the fourth bargaining meeting on 20 July you are. Now, they're not your notes, but the following day Mr Wilkinson swears a statutory declaration, at 26 of your statement there, that:

PN2723

TWU have, at this time, put to one side the lunch in the truck issue.

PN2724

Then there's a PABO that is issued. There's industrial action. Was the lunch in truck issue ever agitated again?---I didn't attend any further meetings after 20 July. Mr Jones and Mr – Darren Jones and Kobie Smit and Narishen Naidoo took carriage of the negotiations. Well, Mr Jones, in my absence, took carriage of the negotiations from there, so - - -

PN2725

All right. So you don't know if it was agitated or not?---No, I didn't attend. I didn't attend any further meetings from 20 July.

PN2726

I know that's what you said, but yes, whether there was emails sent or anything like that?---No, I'm sorry, Commissioner. Just in the meeting on the 20th, so essentially the TWU - how the negotiations were flowing - TWU would go away, report back to the members and we would come back, and from memory, there was a stop/start. There was a stop/start. Negotiations did drag out. Mr Smit got sick for a period of time. I don't - I don't recall whether - I don't recall whether Mr Wilkinson did bring it back to my attention. It's something I would have file noted because it was a very emotional issue in the negotiations, and I don't have any recollection whether he did bring that back to my attention, or at the very least, prosecuted that with me. I can't speak for anything post those meetings because I wasn't there, but between that meeting and me going on leave, no.

PN2727

Well, that's the first time - - -?---It was never really raised with me.

*** BLAKE BYRNE

XXN MS NGUYEN

PN2728

- - - I have heard this issue described as emotional. How was it emotional?---It was emotional because people - people were receiving moneys that they were now no longer receiving. That was the emotion to it. People believed they were owed something on the lunch in truck and that lunch in truck payment ceased back in,

before my time in Armaguard, and that was always how the conversation was centred, 'We want' - you know, essentially - 'our lunch in truck payment back.' So every time it came up it always centred around money.

PN2729

Who was making these statements to you?---So it was the bargaining group. So Mr Humphreys, Mr Smythe, Mr Wilkinson on their behalf, from the opening meeting that we had. From the first meeting that we had these - these comments were made.

PN2730

They're saying they want it back. Did they ever assert that it was unlawfully taken from them?---Not from my - no, it was - it was always centred around the lunch in truck letter that Darren Jones emailed to the relevant branch secretaries around the country, and when the payments stopped that was always what they were referring to, when Darren Jones turned the payment off, the lunch in truck payment. That's always what it was referenced to in the negotiations.

PN2731

He turned the payment off?---Well, he stopped the payment. They saw Darren as the decision-maker. So it was always 'Darren Jones turning the payment. Darren Jones turned the lunch in truck payment off.'

PN2732

Well, he's at this meeting on 20 July?---Correct.

PN2733

Was it agitated towards him?---Not to my recollection.

PN2734

Well, the second last item recorded in the minutes is that the TWU resolved to withdraw the claim. Is that something - - -?---On the basis that - - -

PN2735

Is that something that you remember - - -?---Yes.

PN2736

- - - or you don't remember?---No, I do, on the basis that we would put our best commercial offer forward with respect to a wage increase and a sign-on bonus.

PN2737

And then a PABO was sought, grants and an industrial action taken?---Yes.

PN2738

And this, to your knowledge, never came up again, the lunch in truck issue?---Not in any - not in any meeting that I was in, or not with me directly. There were meetings that were held while I was on leave and I can't talk to what occurred in those meetings.

*** BLAKE BYRNE

XXN MS NGUYEN

PN2739

Did you ever have reason to look at the clause and think that it's not very well worded?---I didn't. I didn't. The payment was turned off. The lunch in truck payment was turned off prior to my involvement with Armaguard. When I started being involved in Armaguard there was an active dispute, I thought, in Tasmania and in ACT, and I never had any cause to think there was. There was never any issue prior to receiving the correspondence from Mr Wilkinson in, I believe December 2022, by Narishen that there was an intention to - to have a dispute, and I was never - I was never minded to go look at the clause. That was never an issue that was - that came up in any discussions or - or conversations or meetings where there was any conjecture where, 'This isn't lunch in truck. It's something else.' That only came to light when we received the correspondence from Mr Wilkinson that they, that the TWU or the members had sort of changed the tact on, 'It's now not lunch in truck. It's something else.'

PN2740

You're on the negotiating committee. You have looked at the 2019 enterprise agreement I imagine?---Yes.

PN2741

And did you read the clauses and that didn't cause you any consternation?---Very - I mean the clause itself, I didn't. If I had looked at it, I have got no notes that says I, that I raised questions about it. It really had nothing to do with me. It was - it was a decision that was made prior to my involvement with Armaguard and the claim - the claim document that we worked through is what we discussed in the negotiations.

PN2742

All right. Anything arising, Ms Dalton-Bridges or Ms Nguyen?

CROSS-EXAMINATION BY MS DALTON-BRIDGES

[3.42 PM]

PN2743

MS DALTON-BRIDGES: Mr Byrne, we have Mr Wilkinson saying he doesn't agree with the minute as to the withdrawal, the TWU withdrawing the lunch in truck provision from the table, and certainly that wasn't his understanding of that meeting. So you don't recall that something that significant was said at that meeting either?

PN2744

MR WILLIAMS: Well, he said he did. His evidence is that he did.

PN2745

MS DALTON-BRIDGES: His evidence is that he didn't.

PN2746

THE COMMISSIONER: Well, that's a question for me. You can ask the question, Ms Dalton-Bridges.

*** BLAKE BYRNE

XXN MS DALTON-BRIDGES

PN2747

MR WILLIAMS: I'm sorry, Commissioner. Agreed.

PN2748

MS DALTON-BRIDGES: Mr Byrne, so you don't remember that discussion that Mr Wilkinson or anyone else said, 'We're going to withdraw the lunch in truck provision from the log of claims'?---My recollection is Mr Wilkinson did make the comment because he was the one that was speaking on behalf of the other members from the TWU, the other delegates that were in the room or on Teams, and it was on the basis that we would put our best commercial offer forward for the enterprise agreement, the sign-on bonus, and the wage increase. So my recollection is that Mr Wilkinson did say that.

PN2749

So, therefore, it would have been if the offer was good enough, then they would consider withdrawing the claim, but it wasn't going to be withdrawn until the offer had been seen?---I don't understand your question; I'm sorry.

PN2750

Well, what you're saying is because there was no best commercial offer on the table. So if a best commercial offer was put on the table and it was acceptable to the members, then it could be considered that the lunch in truck or the paid meal break could be removed from the log of claims?---I don't know if I can answer that. That's a - - -

PN2751

Well, that seems to be - - -?---I can't put myself in the shoes of Mr Wilkinson.

PN2752

Well, that seems to be what you're saying because what Mr Wilkinson is saying is that he never said he would remove from the log of claims the lunch in truck or the paid meal provision?---I can't - I can't - I can't speak for Mr Wilkinson. I can only recollect what I recall from that meeting, and that was - that was that the lunch in truck claim was removed to allow us to put our best commercial offer forward.

PN2753

But it wouldn't be removed until you had put your best offer forward?---Well, I can't - that's a - that's a question for Mr Wilkinson. It's not my claim.

PN2754

Well, I think if there's a problem with the minutes is what we're saying because the minutes were never confirmed by the TWU. The TWU would never remove a claim unless they had seen what had been put by the respondent?---Well, is that a question? I don't know. Is it a - - -

PN2755

THE COMMISSIONER: That's not right, Ms Dalton-Bridges.

*** BLAKE BYRNE

XXN MS DALTON-BRIDGES

PN2756

MS DALTON-BRIDGES: Well, it's a very odd proposition that you would say, 'We're going to remove something on the thought that you will put something to us.' If you put something to us and it was acceptable the basis might be that,

'Well, yes, we will take that to the members and remove, or put to them that we will remove from the log of claims something else', but it wouldn't be done before that had been offered?---I don't know. Is that a question. I don't know.

PN2757

It is a question because - - -?---Well, I don't - I can't answer a question - - -

PN2758

- - - it's illogical to fancy that the TWU would ever remove something on the thought that we might get a promise?---Well, that's a question for the TWU. I can't answer questions on what the TWU would do. I have never worked for the TWU.

PN2759

Well, what I'm saying, Mr Byrne, is - what I'm putting forward to you is that what you're saying is not possible because it can't have occurred that way. It would never have been conceived. Our processes don't work that way so we can't have taken something off the table as something had not been offered.

PN2760

THE COMMISSIONER: Ms Dalton-Bridges, I can't accept that as fact. Thank you.

PN2761

MS DALTON-BRIDGES: Well, we can't accept that what has been put on a piece of paper we never confirmed was fact either, Commissioner.

PN2762

THE COMMISSIONER: I understand that. I understand that's the evidence. You have got a witness here who was at the meeting. You can ask him questions about his recollection of the meeting.

PN2763

MS DALTON-BRIDGES: So you're saying confidently, Mr Byrne, that you think Mr Wilkinson said that?---Yes.

PN2764

I put to you, Mr Byrne, that your memory might not be as clear as you might think. Thank you.

PN2765

THE COMMISSIONER: Well, can I say, Mr Byrne, this is what's recorded:

PN2766

TWU will withdraw claim 15 pending an offer from the company.

*** BLAKE BYRNE

XXN MS DALTON-BRIDGES

PN2767

What does that mean?---My recollection from that meeting was that claim would be withdrawn to allow the company to go away and put our best commercial offer forward, and that was due to us saying if the claim is pressed to reintroduce lunch

in truck that will affect any ability for us to give sign-on bonuses or - or meaningful wage increases because it's - it's a cost to the business that we say is not - is not an entitlement, the lunch in truck payment. That was the - that was the
- - -

PN2768

Who said those things?---What I just said now?

PN2769

Yes?---So that was - those comments were continuously said either between myself or Mr Naidoo, we would, that we would, concerning those conversation:

PN2770

If you're going to continue to ask for something that has a significant cost in the business, that we say you're not entitled to, that affects our ability to put any sort of commercial offer on the table that's meaningful with respect to the sign-on bonus and the wage increases.

PN2771

They were constantly, there was comments constantly made throughout the negotiations surrounding that.

PN2772

Did you have an idea of the price tag?---No, I don't, because I wasn't involved in - I wasn't involved in any assessment or review of the lunch in truck - of the lunch in truck payments. Mr Naidoo and Mr Smit were, but no, I didn't. All I know is it would be a significant cost given how it was being administered.

PN2773

So something to the effect of, 'If you ask for that to be reinstated it affects what can be offered as a percentage or sign-on bonus'?---Exactly.

PN2774

By either yourself or Mr Naidoo?---Correct.

PN2775

All right. Anything arising, Ms Dalton-Bridges?

PN2776

MS DALTON-BRIDGES: No. Thank you, Commissioner.

PN2777

THE COMMISSIONER: Anything arising, Mr Williams?

PN2778

MR WILLIAMS: No, not from me, Commissioner. Thank you very much.

PN2779

THE COMMISSIONER: All right. Thanks, Mr Byrne for giving your evidence. You're now excused. Thank you?---Thank you.

*** BLAKE BYRNE

XXN MS DALTON-BRIDGES

PN2780

MR WILLIAMS: Commissioner, that's the evidentiary case of the respondent. I think we just have to make a time for submissions. Now, that could be in writing - and of course, we will wait for the transcript - but submissions could be in writing, oral or a bit of both. Commissioner, I'm happy with either, but this is a matter where I imagine there are lots of issues that you might want to be specifically addressed on, so I guess I'm favouring that the parties come back for at least a couple of hours to give brief oral submissions and answer your questions, and I guess I'm - - -

PN2781

THE COMMISSIONER: Well, I'm happy with that, if you want to supplement it with some written submissions as well.

PN2782

MR WILLIAMS: Yes. We will do submissions in writing, but, Commissioner, just understanding the complexity of the matter and, of course, your style which is to really drill into everything in a very thorough way. I would be just as happy to come back so I was sure that I had a chance to answer any questions you might have.

PN2783

THE COMMISSIONER: All right. Very good. Now, I have asked Mr Wilkinson to produce his notes - - -

PN2784

MR WILLIAMS: Yes. Of course.

PN2785

THE COMMISSIONER: - - - from the meeting of 20 July, but I would also like to see if others kept notes because Mr Wilkinson said that typically people keep their own notes. So there's Mr Hurndell, Nathan Smythe. I don't know who Ian and Kerry are, but Mr Smythe gave evidence. I think Mr Hurndell and Mr Smythe, if they have notes, that they should produce those notes of 20 July, please.

PN2786

MR WILLIAMS: Commissioner, I will make an inquiry with my side as well just in case somebody else has kept some notes.

PN2787

THE COMMISSIONER: All right.

PN2788

MR WILLIAMS: I think it's such an important meeting and we probably should have everything.

*** BLAKE BYRNE

XXN MS DALTON-BRIDGES

PN2789

THE COMMISSIONER: Yes, but I imagine somebody is sitting there plugging away on a computer.

PN2790

MR WILLIAMS: Yes.

PN2791

THE COMMISSIONER: It's just over two pages of typed notes.

PN2792

MR WILLIAMS: From what sounds like a pretty complex meeting. So I think it's a good inquiry and we will facilitate it from our side as well.

PN2793

THE COMMISSIONER: All right. So notes of the 27th from Mr Wilkinson, Mr Smythe and Mr Hurndell. Well, I will order - it will be roughly about a week turnaround or thereabouts. Do you want to put submissions on scattergun or together?

PN2794

MS DALTON-BRIDGES: Given it's our application, Commissioner - and I would have felt that we would have gone first in proposing what we thought should happen - I will take that opportunity now. I think submissions should be due together and probably two weeks after the transcript would be reasonable, and then whatever you feel you would like in terms of a hearing to vent any issues that might have come forward within the submissions.

PN2795

THE COMMISSIONER: I think that's sensible. All right. So two weeks. Put your submissions on together and then if there's anything that comes about for the parties, then you can speak to that during the oral submissions.

PN2796

MR WILLIAMS: That's an efficient course. Just so I'm clear, so we get the transcript and then two weeks?

PN2797

THE COMMISSIONER: Yes.

PN2798

MR WILLIAMS: That's fine.

PN2799

THE COMMISSIONER: Yes. So let's pencil something, and then beyond that, how long beyond receiving each other's submissions would you like to return for the oral submissions?

PN2800

MR WILLIAMS: I'm sure it could be very quickly after that. If we had seven days, and I think any date after that as far as I'm concerned. It would have to be a date suitable to both of us.

PN2801

MS DALTON-BRIDGES: Yes, that is exactly right.

PN2802

THE COMMISSIONER: All right. So that brings us out to about a month.

PN2803

MS DALTON-BRIDGES: Yes. Yes, whatever - - -

PN2804

THE COMMISSIONER: Well, let's have a look at our diaries. I mean assume the transcript is more like a Monday week type scenario.

PN2805

MR WILLIAMS: So we're looking towards the back end of September then, perhaps?

PN2806

THE COMMISSIONER: Yes, and then, you know, we won't put a date on when you need - it will just be two weeks from the receipt of that. Let's try and find something in September then.

PN2807

MR WILLIAMS: If the first logical week and I hesitate to say anything which might suggest I'm imposing - but if the week of 18 September is the first likely week, I would be available the Monday, the Tuesday, the Thursday - or the Thursday.

PN2808

MS DALTON-BRIDGES: Might we want to go, Commissioner, to the further week, the week of the 25th sometime, just depending on the transcript production?

PN2809

THE COMMISSIONER: I think so, just to be safe.

PN2810

MR WILLIAMS: I don't have any problem with that. Again, the Monday would be fine.

PN2811

THE COMMISSIONER: I have (indistinct) having wisdom teeth extracted on Tuesday, the 26th.

PN2812

MS DALTON-BRIDGES: Which means you may be required for - - -

PN2813

THE COMMISSIONER: So the Monday would be suitable.

PN2814

MR WILLIAMS: Not suitable?

PN2815

THE COMMISSIONER: Is that suitable to you?

PN2816

MS DALTON-BRIDGES: The Monday would be suitable.

PN2817

MR WILLIAMS: It would be suitable?

PN2818

MS DALTON-BRIDGES: Yes.

PN2819

THE COMMISSIONER: All right. Monday, 25 September.

PN2820

MS DALTON-BRIDGES: Yes.

PN2821

THE COMMISSIONER: It is school holidays. I'm not sure if that affects anyone.

PN2822

MR WILLIAMS: My children are well beyond that.

PN2823

THE COMMISSIONER: I'm in the thick of it.

PN2824

MS DALTON-BRIDGES: Yes, an 18-year-old is still young.

PN2825

THE COMMISSIONER: Yes. We go 18, 16 in a couple of weeks, and then 11-year-old twins.

PN2826

MS DALTON-BRIDGES: Oh, my.

PN2827

MR WILLIAMS: That sounds like peak activity.

PN2828

MS DALTON-BRIDGES: That sounds very expensive.

PN2829

THE COMMISSIONER: About to start the L-plate, the 100-hours again.

PN2830

MR WILLIAMS: That's peak stress.

PN2831

THE COMMISSIONER: It's going to be worse in five years' time when the twins are doing it.

PN2832

MS DALTON-BRIDGES: I was going to say and twins to high school, so - - -

PN2833

THE COMMISSIONER: Yes.

PN2834

MR WILLIAMS: Were we looking at the 25th then, were we?

PN2835

THE COMMISSIONER: Yes. Monday, 25 September.

PN2836

MR WILLIAMS: I expect we will just need half a day, but whatever is - - -

PN2837

THE COMMISSIONER: From 10 am.

PN2838

MR WILLIAMS: Thank you.

PN2839

THE COMMISSIONER: All right. Well, just whenever you can produce those documents, Ms Dalton-Bridges.

PN2840

MS DALTON-BRIDGES: Yes. I will get on to that as soon as possible on Monday, Commissioner.

PN2841

THE COMMISSIONER: Nice to see you on your feet, Ms Nguyen.

PN2842

MS NGUYEN: Thank you. So perhaps if I can just ask. I think yesterday you mentioned you wanted one of the exhibits for a (indistinct) statement. There was the last column cut off and you wanted that.

PN2843

THE COMMISSIONER: Yes. Yes, if you could produce that as well, but nice work on the advocacy.

PN2844

MS NGUYEN: Thank you.

PN2845

THE COMMISSIONER: Very good. I haven't seen on your feet before, so - - -

PN2846

MS NGUYEN: Once. I haven't seen the recording, so - - -

PN2847

THE COMMISSIONER: Okay. Well, this is the real thing.

PN2848

MS NGUYEN: Yes, this is.

PN2849

THE COMMISSIONER: All right. Any questions, parties?

PN2850

MR WILLIAMS: No. Thank you, Commissioner. Thank you.

PN2851

MS DALTON-BRIDGES: No. Thank you, Commissioner.

PN2852

THE COMMISSIONER: All right. Thank you. We will adjourn.

ADJOURNED UNTIL MONDAY, 25 SEPTEMBER 2023

[3.56 PM]

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