

Industrial Relations Commission
of New South Wales



CITATION:

Westfield Design & Construction Pty Ltd Liverpool
Shoppingtown Project Award and other matters, Re [2005]
NSWIRComm 58

PARTIES:

APPLICANT:
The Master Builders' Association of New South Wales
RESPONDENT:
Labor Council of New South Wales and others

FILE NUMBER:

IRC 512, 513, 514 and 515 of 2005

CORAM:

Walton J Vice-President

CATCHWORDS:

Awards - Building and Construction Industry - Applications for
New Project Awards - History of Building and Construction
Industry awards - Awards made

DATES OF HEARING:

23/02/2005

EXTEMPORE

JUDGMENT DATE:

23/02/2005

LEGAL

REPRESENTATIVES:

APPLICANT:
Mr W Pirocki
Industrial Officer
The Master Builders' Association of New South Wales

RESPONDENT:

Mr C Christodoulou
Deputy Assistant Secretary
Labor Council of New South Wales

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

CORAM: WALTON J, VICE-PRESIDENT

23 FEBRUARY 2006

MATTER NO. IRC 512 OF 2005

WESTFIELD DESIGN & CONSTRUCTION PTY LTD LIVERPOOL
SHOPPINGTOWN PROJECT AWARD.
APPLICATION BY THE MASTER BUILDERS' ASSOCIATION OF NEW
SOUTH WALES FOR A NEW AWARD.

MATTER NO. IRC 513 OF 2005

WESTFIELD DESIGN & CONSTRUCTION PTY LTD MT DRUITT
SHOPPINGTOWN PROJECT AWARD.
APPLICATION BY THE MASTER BUILDERS' ASSOCIATION OF NEW
SOUTH WALES FOR A NEW AWARD.

MATTER NO. IRC 514 OF 2005

WESTFIELD DESIGN & CONSTRUCTION PTY LTD PARAMATTA
SHOPPINGTOWN PROJECT AWARD.
APPLICATION BY THE MASTER BUILDERS' ASSOCIATION OF NEW
SOUTH WALES FOR A NEW AWARD.

MATTER NO. IRC 515 OF 2005

WESTFIELD DESIGN & CONSTRUCTION PTY LTD TUGGERAH
SHOPPINGTOWN PROJECT AWARD.
APPLICATION BY THE MASTER BUILDERS' ASSOCIATION OF NEW
SOUTH WALES FOR A NEW AWARD.

DECISION

(extempore)

[2006] NSWIRComm 58

1 By applications filed on 1 February 2006, the Master Builders' Association of New South Wales sought the making of four building and construction

The proposed awards are in a form now well familiar to the Commission in relation to major building and construction projects. The provisions of those awards are intended to produce an optimal climate for the undertaking of the project which involves the maximisation of efficiency and productivity combined with fair and safe workplace conditions. Such awards typically provide clauses concerning productivity initiatives, dispute resolution, occupational health and safety and basic workplace conditions and standards. From submissions received in this matter and within the knowledge of the Commission, these objectives have by and large been met in projects which have been the subject of these modern building and construction project awards. A more detailed overview of that history would no doubt be available as a matter of evidence and may in due course be a desirable accompaniment to further applications of this kind.

The applications were joined and amended in terms of draft awards filed in the proceeding by the applicant on 21 February 2005. The applications proceeded with the consent of the respondent unions who were represented in the proceedings by Mr C Christodoulou of the Labor Council of New South Wales (now known as Unions NSW) 3
In the joint written submission filed in support of the application, the parties contended that the project awards contained similar provisions to other building and construction industry project awards approved by this Commission with the addition of some clauses which had traditionally appeared in awards affecting Westfield projects. In particular, the parties relied, in support of the applications, upon the decision of the Commission as presently constituted in *Re Lend Lease Hotel Intercontinental (Stage 1) Project Award and/or* (unreported, Matter Nos. IRC3881 and 3896 of 2003, 26 September 2003), wherein the Commission stated: 4

Industry project awards for the construction and refurbishment of Westfield shopping centres (known as a "Shoppingtown") at Liverpool, Mount Druitt, Tuggerah and Parramatta. Mr W Potocki who appeared for the applicant indicated that the projects ranged in value from \$15 to \$50 million.

According to records kept by Unions NSW it has been involved in the making of project awards/agreements as follows:

Following the success of the Olympics Construction Program many builders decided that the use of project awards/agreements was a useful mechanism to achieve outcomes which were of benefit to both parties. The growth in the number of project awards/agreements can be seen in the lists provided for in Appendix C.

So successful was the process of project agreements that their evolution and history is now well documented in the book written by Tony Webb called the "Collaborate Games". Appendix B encloses the chapter "Building the Theatre" which outlines in some detail the success of this approach.

The concept of establishing minimum conditions on a project and rewarding workers with a project productivity allowance in return for productivity measures became the hallmark of the Sydney Olympics Construction Project.

Project Awards or Agreements began to evolve particularly in the lead up to the Sydney Olympic Games and the construction of the infrastructure associated with the 2000 Games.

By reference to the invitation contained in this aforementioned extract from *Re Lend Lease Hotel Intercontinental (Stage 1) Project Award*, the parties made the following additional submissions in support of their contention that the project awards had proved successful:

It was submitted, in this respect, that the above conclusions reached by the Commission in relation to the modern form of building and construction industry awards in New South Wales were correct and that this fact should support the grant of the present application. It was further contended that the awarding of the project awards "will provide both benefits to Westfield Design and Construction and employees who work on these sites and will assist in producing a harmonious industrial relations environment".

6

5

ii.

i.

As will be observed, the parties contend that the principal elements of the current building and construction industry awards derive from the scheme of industrial regulation developed for the Sydney Olympics. In his book entitled "The Collaborative Games", Mr Webb gave a detailed analysis of the new industrial relations framework which was introduced for building and construction at the Olympic project. He identified that significant changes to industrial arrangements normally applying in the building and construction industry were introduced by a Memorandum of Understanding between the industrial parties involved in the Olympic project. This agreement was

7

iv. Milestone incentive payments and/or other productivity incentives have been a significant factor in reducing lost time and delays.

In nearly all cases the objectives set out in the Awards have been advanced. The number of disputes and number of days lost to industrial action have decreased where project awards are in place.

iii. In terms of all Project Awards/Agreements made by the Commission in 2004, very few have experienced disputes at a level which required the Commission's intervention. Most projects have come in, "on time and on budget" and where they have not, it would seem factors beyond the control of the workforce have been the primary cause.

As the material in Appendix C shows some builders prefer to have unregistered signed project agreements, but the vast majority of builders as does Unions NSW, prefer to have project awards made by the NSW Industrial Relations Commission. The vast majority of Project Awards made by the Commission are for projects in excess of \$15 million dollars.

Year	Number of Project Awards/Agreements
2001	13
2002	12
2003	30
2004	33

Defining an 'industry' for the Games that embraced all of the services to be provided to SOCOG by private industry contractors so that common conditions could be specified for workers across all these services - reducing the scope for resentments over differences and pressure for 'leapfrogging' claims later.

Mr Webb also described the evolution of the building and construction awards for the Sydney Olympics into an award for the operation of the Games. The award was negotiated through proceedings before *Wright J*, President, and resulted in his Honour making the *Sydney Olympic & Paralympic Games 2000 (State) Award* (1999) 310 NSW IR 989. Mr Webb described the elements of that award as follows:

Overall, the performance indicators of safety, skill formation, lack of dispute, mediation of disputes, on time and under budget delivery marked the construction phase as a huge success.

Mr Webb described the considerable benefits for both employers and employees (and ultimately the project itself) by those arrangements. They included provisions which are now familiar in modern project awards including a culture of collaboration (underpinned by the objectives to the awards), the provision of a productivity allowance, milestone incentive payments and dispute resolution procedures. The Olympic site awards and agreements also contained the now familiar feature of building and construction industry project awards of having common conditions of employment applying across the project including for the network of sub-contractors engaged on various aspects of the site (arrangements facilitated by the jurisdictional reach of this Commission under the *Industrial Relations Act 1996*). Mr Webb concluded as to the construction and building awards that:

reflected in awards made for the Olympic Project (see, for example, the award made by *Fisher J*, then President, in *Sydney 2000 Olympic Headquarters Project Award* (1998) 306 NSWIG 40.

9

8

The joint submissions of the parties in this case and experience in this sector demonstrate that the project awards which have been made under the *Industrial Relations Act 1996* have similar provisions and a similar measure of success to the Olympic project awards based upon factors consistent with

10

Guaranteeing that the special conditions of the award would not set a precedent for future awards.

Guaranteeing union rights of access to the workforce at each stage in the process, particularly during the recruitment, training and accreditation processes and during the Games itself. This ensured that the collaboration between SOCOG, contracting employers and the unions was a visible feature of the Games. It ensured unions would be proactive in identifying problems on site and it established effective communications for dealing with these when they arose.

Establishing dispute resolution mechanisms for dealing with problems as they arose - avoiding disruption in the lead-up to and during the Games.

Defining an Olympic Bonus of \$1.50 per hour to be paid at the end of the Games to all workers who completed 95 percent of the shifts they were rostered for. This overcame the problem of people dropping out of the workforce part way through the Games leaving significant gaps in the workforce.

Defining wage rates to apply in each of the major service jobs that would represent a fair and appropriate rate at the time of the Games in September 2000 taking into account the unique nature of the event and the flexibility in working patterns required. This provided budget certainty for SOCOG, and for the contracting companies as the contract price would be based on these wage rates. This avoided two of the main problems of Atlanta - 'leapfrogging' of wage rates as contractors competed for scarce labour and the loss of recruited workers to other sectors as the wage rates for different jobs changed.

Defining clearly the Games period for which the award would apply. This avoided the creation of precedents based on the unique Games situation. Existing award conditions would apply up to the Games period and be reverted to after.

those referred to by Mr Webb. For those reasons, the present applications must be considered as applications having considerable industrial merit and very much satisfying the objects of the Act.

11 Furthermore, the proposed awards meet the particular requirements for the making of awards in that Act and the wage fixing principles as enunciated in the State Wage Case 2004 (2004) 132 IR 190.

12 In those circumstances, the Commission has no hesitation in making the awards to be known as the Westfield Design & Construction Pty Ltd Liverpool Shoppingtown Project Award, Westfield Design & Construction Pty Ltd Mt Druitt Shoppingtown Project Award, Westfield Design & Construction Pty Ltd Parramatta Shoppingtown Project Award and Westfield Design & Construction Pty Ltd Tuggerah Shoppingtown Project Award in terms of the amended applications filed on 21 February 2005. The Commission orders accordingly.

13 The awards shall operate on and from the following dates until the date of Practical Completion (as defined in the awards):

Westfield Design and Construction Pty Ltd
Liverpool Shoppingtown Project Award
Matter No IRC 512 of 2005
17 February, 2005

Westfield Design and Construction Pty Ltd
Mt Druitt Shoppingtown Project Award
Matter No IRC 513 of 2005
22 November, 2004

Westfield Design and Construction Pty Ltd
Parramatta Shoppingtown Project Award,
Matter No IRC 514 of 2005
30 September, 2004

Westfield Design and Construction Pty Ltd
Tuggerah Shoppingtown Project Award
Matter No IRC 515 of 2005
22 September, 2004