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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

[s.99](#) Notification of industrial disputes

The Australian Workers' Union

and

Kinetik Energy

(C No. 30763 of 1998)

GAS INDUSTRY UNIONS (GASCOR) AWARD 1994

(ODN C No. 36354 of 1994)

[Print No. M1525[G0295]]

Various employees

Oil and gas industry

COMMISSIONER RAFFAELLI

SYDNEY, 22 APRIL 1999

Grading of jobs

DECISION

1. This matter came before the Commission as a result of The Australian Workers' Union's concern at what it felt was the improper grading of some seven of its members employed by Kinetik Energy (Kinetik). Kinetik is one of the successors of the former Gas and Fuel Corporation (GASCOR). It is what can be described as one of the distribution companies.

2. Prior to corporatisation, the former GASCOR was dis-aggregated and relevantly here the Customer Relations section was split and existing staff divided and allocated to the three retail divisions of GASCOR. These were Ikon, Energy 21 and Kinetik Energy. Those three divisions were later corporatised (currently all shares are owned by the Victorian Government).

3. In summary the disagreement arises as a result of the failure by Kinetik to maintain in its customer relations section (now called by it the Domestic Markets Department) the same gradings as previously applied at GASCOR to persons now carrying out the functions at Kinetik. The company has said that its grading of employees resulted from the report of outside consultants who utilised the Hay methodology and was appropriate both as to process and outcome. The union is aggrieved in that it was excluded from what it felt should have been a joint process and also disagrees with the outcome as to the grading of some seven individuals. It considers that the company's actions are at variance with the relevant provisions of the Gas Industry (Gascor) Award 1994 (the Gascor award).

4. The matter was not able to be resolved. As a consequence the matter proceeded to arbitration. However prior to dealing with the merits of the application, the company submitted that in its view the Commission did not have jurisdiction to make the proposed award. By a decision issued on 15 July 1998 (Print Q3712) the Commission found that there were no jurisdictional barriers to the Commission dealing with the application.

5. This decision now deals with whether the Commission should make the following award as sought by the Union:

" Notwithstanding the provisions of any award each employee who is the subject of this dispute shall be classified and treated for all purposes at classifications equivalent to the following bands specified in the Gascor Award:

<i>Name</i>	<i>Classification</i>	<i>Band</i>
<i>Karen Rodgers</i>	<i>Legal Collection Coordinator</i>	<i>6</i>
<i>Linda Cometti</i>	<i>Legal Collection Officer</i>	<i>5</i>
<i>Melissa Tyack</i>	<i>Direct Debt Supervisor</i>	<i>5</i>
<i>Gary Allsop</i>	<i>Ledger Control Accountant</i>	<i>6</i>
<i>Tony Pittorino</i>	<i>Business Analyst</i>	<i>7</i>
<i>Paul Wallace</i>	<i>Meter Reading</i>	<i>6</i>
<i>Wayne Baxter</i>	<i>Supervisor Billing & Contract</i>	<i>6"</i>

6. Of relevance to the grading of the seven persons that is the subject of this matter is that at or about July 1997, the company informed the union that it would

seek to develop position descriptions and evaluate the roles performed by employees in its domestic market department. That department comprised about 27 employees including the 7 that are now aggrieved.

7. Between September and December 1997, Mr Kingsley Child undertook the task of preparing position descriptions (PDs) in conjunction with each of the employees. Several draft PDs were prepared and ultimately all employees "signed off" on their respective PD about late December 1997.

8. The PDs were evaluated by an evaluation panel in January 1998. The panel comprised Mr Child, Ms Robyn Mulvena and Ms Caryle Demarte, also of the Company, together with Mr Niall Eyre an outside consultant expert in applying the Hay job evaluation methodology.

9. The Hay job evaluation methodology has been used by GASCOR for many years. Moreover, the award also provides that (relevantly):

" GASCOR's method of classification will depend upon an objective evaluation system as contained in GASCOR's Policies and Procedures Manual.

The following definitions are broad and generic in nature and their application is determined by comprehensive Position Descriptions which provide detailed information including:

- Qualifications/Experience*
- Responsibilities*
- Indicative Tasks*
- Minimum/Maximum Band Level Limitations"*

10. Although it is a matter of controversy, the Company suggests that the panel considered the provisions of the award and applied the Hay system appropriately.

11. As a result the employees were assigned salaried bands. Of the 24 or so employees in the department, seven were unhappy with the gradings that they received. The gradings were:

Name	Classification	Band
Karen Rodgers	Legal Collection Coordinator	4
Linda Cometti	Legal Collection Officer	4
Melissa Tyack	Direct Debt Supervisor	4

Gary Allsop	Ledger Control Accountant	4
Tony Pittorino	Business Analyst	6
Paul Wallace	Meter Reading	3
Wayne Baxter	Supervisor Billing & Contract	4

12. The AWU's objection as to the outcome was put on two bases.

13. Firstly, it made reference to an undertaking given by a Department of Treasury and Finance officer Mr J A Kelly to the union at the time when the disaggregation of GASCOR into three entities was to occur. The undertaking relevantly provided that :

" In situations where existing jobs need to be duplicated, those additional positions will be advertised and carry the same pay and conditions as the existing job."

14. The AWU argued that as the positions carried out by the seven employees as at January 1998, were substantially duplications of jobs that had been carried out at GASCOR (in many cases by the superiors of some of the seven employees), the seven employees should be paid at the levels that those positions were graded at GASCOR. The AWU's claim at 5 reflects the levels of the positions at GASCOR.

15. The second broad agreement of the AWU is that the process of preparing the PDs was flawed. This is both because the PDs were not sufficiently comprehensive to enable the Hay methodology to be applied correctly and because the evaluation panel did not carry out its functions appropriately including because the PD's that were used were not in accord with the requirement of the award (see 9 above).

16. The arguments of the AWU described in 13 and 15 provide convenient headings for the considerations of the substantial witness evidence given on behalf of the union and Kinetik.

17. *Ms Karen Rodgers* gave evidence that as a legal collection co-ordinator she supervised the work of another, *Ms Linda Cometti* (T 127, T 141). She also said that she was involved in liaising with regard to negotiation of repayments (T 128). She did not perform these functions at GASCOR (T 128). There were supervisors of her work at GASCOR and they did the higher negotiations (T 128). She also gave evidence that the job she now performs at Kinetik was the same as that performed by others at GASCOR. They were then graded at Band 6 (T 124). She also gave evidence that she attends various meetings in her capacity as a supervisor (T 141, sworn statement para 5.). Moreover she said that her previous manager (*Mr Glyn Elias*) referred to her as a supervisor (T 134).

18. In respect of *Ms Rodgers*' position *Mr Child* gave evidence that as *Ms Rodgers* worked in a smaller department than had existed at GASCOR that might affect the grading of such employee (T 235). *Mr Child* was unable to put anything else to the Commission that indicated a material difference between the functions now performed by *Ms Rodgers* and those functions formerly performed by Band 6 employees at GASCOR.

19. Saving what is referred to in 18, there was no evidence put to the Commission that contradicts Ms Rodgers evidence as to what functions she now performs and who performed those functions at GASCOR. In fact her evidence was that:

" I'm saying that I said that I was the supervisor not because I was only more experienced but I've already been referred to as a supervisor by the manager of the department at the time Mr Glyn Elias and also I was included as supervisor in supervisor meetings, which Linda was not. So I've been indicated as a supervisor by the manager of the department, Mr Glyn Elias." (T 134)

20. Mr Elias was not called to give evidence nor was Mr Boulden, Mr Elias' successor. I conclude that the failure of the company to call either Mr Elias or Mr Boulden leads to the inference that their evidence would not have assisted the company's case (*Jones v Dunkel* (1959) 101 CLR 298).

21. I conclude that the job now being performed by Ms Rodgers at Kinetik is a duplication of jobs previously performed at GASCOR and which were graded at Band 6. I have taken the term "duplication" as it appears in the Kelly letter (13 above) to mean that the position is substantially the same as between the two organisations. To take duplication to mean identical in all ways would make the Kelly letter a nonsense. After all the successors of GASCOR were new entities and thus there could not ever have been precise repetition of positions. I have taken an approach that is practical and one which seeks to give meaning and substance to the letter of Mr Kelly.

22. *Ms Linda Cometti* gave evidence that her work has increased (T 150). Her evidence did not disclose that her job at Kinetik was a duplication of a job performed previously at GASCOR which was classified higher than at what she was now (and was then) graded.

23. Ms Cometti stated that her PD reflected her responsibilities and duties albeit the they were briefly described (T 149, 151).

24. *Ms Melissa Tyack* gave evidence that she performs the same functions at Kinetik, that were performed at GASCOR by a Mr Hughes (T 185). There was no evidence to the contrary. Mr Hughes now works for Energy 21. Although it is not fully clear it seems that at GASCOR Mr Hughes was graded at Band 5 (see T 182-183). In its final submission the company agreed that Mr Hughes had been graded at Band 5 (T 312-313). Ms Tyack is now graded at Band 4 at Kinetik.

25. I conclude that the job now being performed by Ms Tyack at Kinetik is a duplication of a job previously performed at GASCOR by a person graded at Band 5.

26. *Mr Paul Wallace* gave evidence that he had not been happy with his PD. He signed the PD very much at the last minute of a deadline. Many persons were waiting for the PDs to be finalised. He was the last to sign. His PD did not reflect all his functions and responsibilities (T 173).

27. Mr Wallace referred to his expectation that he would be graded at levels similar to those applying at Ikon and Energy 21 (T 174).

28. Mr Wallace gave evidence that he had heard the "he would be looked after" (T 175).

29. There was no evidence from Mr Wallace that his job at Kinetik was a duplication of a job performed previously at GASCOR which was classified higher than at what he was now (and was then) graded.

30. *Mr Gary Allsop* gave evidence that he performed all functions performed by his supervisor at GASCOR excepting actually supervising other staff (T 195,

197).

31. Mr Allsop gave evidence that his PD was accurate (T 201, 205).

32. *Mr Tony Pittorino* gave evidence that he felt that the PD prepared did not adequately reflect his duties, responsibilities and knowledge (sworn statement paragraphs 13,14) (T 167).

33. Mr Pittorino indicated that he was told by Mr Child that PDs had to be limited to no more than two pages (T 167).

34. Mr Pittorino indicated that absent any advice to the contrary, he was providing functions beyond information technology support, as he had at GASCOR (T 168). However he seemed to accept that in fact at the time the PD was being prepared he was not required to actually perform functions beyond information technology support (T 169, 170).

35. There was no evidence that Mr Pittorino's job at Kinetik was a duplication of a job performed previously at GASCOR which was classified higher than at what he was now (and was then) graded.

36. *Mr Wayne Baxter* gave evidence that he was happy with his PD excepting the word "administrator" should have been replaced by the word "manager".

37. There was no evidence that Mr Baxter's job at Kinetik was a duplication of a job performed previously at GASCOR which was classified higher than at what he was now (and was then) graded.

38. On the basis of the evidence referred to above, I conclude that Ms Rodgers and Ms Tyack occupy positions which are duplications of certain positions occupied at GASCOR and to which higher bands applied. Consistent with the undertaking by the Department of Treasury and Finance Ms Rodgers should be graded at pay band 6 and Ms Tyack should be graded at pay band 5..

39. On the basis of the evidence referred to above, I conclude that the PDs of Ms Cometti, Mr Allsop, Mr Pittorino and Mr Baxter were an appropriate reflection of the duties and responsibilities of the employees.

40. My reason for so finding in respect of Ms Cometti and Mr Allsop was that those employees directly said so in evidence.

41. Mr Pittorino gave evidence that one shortcoming in the PD was that it failed to include references to the status of similar work being carried out by Ikon and Energy 21. I dismiss that contention. Its omission from the PD in no way results in the PD not being appropriately accurate.

42. Mr Pittorino gave evidence that another shortcoming in the PD was that it failed to adequately explain duties that were beyond matters related to information technology support. However under cross examination he agreed that when the PD was prepared he only provided support information in respect of information technology (T 168 - 170). There was no evidence that he performed business analyst functions beyond those related to information technology. I therefore conclude that the PD in no way results in it being anything other than an appropriate reflection of his functions and responsibilities at the relevant time.

43. Mr Baxter gave evidence that he was happy with the PD excepting that the word "manager" should have replace the word " administrator" (T 189/190). I do not consider that factor to materially alter the appropriateness of the PD.
44. As to all four positions for which an appropriate PD had been prepared as I have determined above, the question is whether the subsequent evaluation using the Hay methodology was a just outcome.
45. The union contended that the process undertaken by Kinetik in its evaluation process was flawed.
46. Firstly, they contended that there was no consideration given to whether or not positions were duplicated. As to Ms Rodgers and Ms Tyack whether or not such consideration was given is neither here nor there. The fact is that I have found that duplication applied and consequences now flow in accordance with the undertaking. As to the other five employees, because I consider that there has not been duplication, whether or not Kinetik considered this aspect is not ultimately of any consequence.
47. Secondly, the union contend that the PDs were not full PDs as required by the award. Additionally, the focus of consideration by the evaluation panel was the needs of the employer. That is not in accord with the award's requirements. This is rejected by Kinetik.
48. Although, Ms Mulvena gave evidence that the award was referred to in "tracking" how the evaluation of positions was going (T 188), I am not satisfied that the specific requirements of the award were complied with.
49. The relevant extract of the award is detailed in 9. It requires that the PDs "provide detailed information including Qualifications/Experience; Responsibilities; Indicative Tasks; Minimum/Maximum Band Level Limitations." The evidence of Mr Child (T247/8) and of Ms Mulvena (T 285/6) attest to this.
50. Apart from the question of what seems to be a non-compliance with the award requirement per se, for present purposes it is necessary to determine what are the consequences of such failure to follow the award.
51. I consider that the evidence of Mr Eyre is sufficient (T 276). Mr Eyre agreed that the PDs that he had considered did not include all of the things that (unknown to him then) need to be included in PDs by the award. He agreed that if more information had been available to him he would have read such material. He may have taken such information into account.
52. It may be that if the PDs had included the other matters required by the award a different outcome as to gradings may have occurred. I am therefore not satisfied that an appropriate classification of these four employees has occurred.
53. It may be however that even with comprehensive award-compliant PDs the same results may have occurred. The fact is we don't have award-compliant PDs.
54. Equally, this provides the basis for not acceding to the union's claim in respect of these four employees. Whatever be the shortcomings in the material considered by the evaluation panel, I do not consider that there is sufficient material before me to enable the grading of the four persons in accordance with the award sought by the union.
55. I am aware that Mr Nunn was called by the union to give evidence and analyze the position held by the employees. Mr Nunn has expertise in job evaluation

and with the Hay system.

56. I am not persuaded that I should rely on Mr Nunn's evaluations for the following reasons:

(1) To a large extent Mr Nunn relied on the PD's that were used by the company. I have already determined that they are not as required by the award. Any shortcomings affecting the company's analysis would equally infect Mr Nunn's.

(2) Mr Nunn did not speak to anyone in the company other than the seven aggrieved employees. He agreed (T 84) that to have full understanding of a position there should be a full understanding of the context in which the position operates. He agreed (T 85) that if he had undertaken the evaluation task as a consultant, he would have interviewed a range of persons including managers to ascertain the context of the relevant position.

(3) It seems that (at least some) of the evaluations were based on the positions held in late 1998 (when Mr Nunn interviewed the employees). However, Kinetik's analysis was based on position at December 1997 and it is the resultant outcomes then that are the subject of these proceedings. This may have affected the outcome of the evaluations. An example is the case of Mr Baxter. He was evaluated by Mr Nunn on his current position in late 1998. At the December 1997/January 1998 period he was employed in another position.

57. In respect of Mr Wallace, I find that his PD was flawed even apart from its lack of compliance with the award requirement. In his evidence (T 173) he indicated that although signing off on his PD, he was not happy with the PD. He signed it on the basis of the need to wrap up the process before Christmas 1997 (T 178) and management assurances that he "would be looked after" (T 173). He felt that the PD gave insufficient weight to the fact that he was a one-man department, having previously operated as part of a team (T 178).

58. I found Mr Child's evidence in respect of Mr Wallace's assertion of discontent with his PD, as evasive and unhelpful.

59. If Mr Wallace's PD had included the references sought to certain functions and responsibilities sought by him, the outcome as to his grading may have been different.

60. My comments as to the weight that should be given to Mr Nunn's analysis (see 56) apply equally to Mr Wallace.

CONCLUSION

61. Given my findings, I propose to make an order that would have the effect of grading Ms Rodgers at Band 6 and Ms Tyack at Band 5. In making such an order I do so in the context of the requirements of the Act, including sections 89A and 143. I also do so with the current wage fixing principles in mind. The union will submit an appropriate draft order.

62. As to the other five aggrieved employees I have found that their grading resulted from a process that omitted consideration of relevant material as required by the award. What I now do in that regard must be put in context.

63. The context is that the application by the union is that the five (remaining) employees should have been graded in a certain way in January 1998. Associated

with that is the contention that the company's grading was wrong. For reasons already expressed, the grading by the company omitted consideration of certain necessary factors. This may have resulted in incorrect gradings of some or all of the five employees. I do not consider that there is sufficient basis to determine that matter in the way sought by the union. The evidence of the employees is insufficient to determine that they be grade as is sought in the application by the union (see 4 above). I have already expressed my attitude as to Mr Nunns' assessment.

64. I have decided not to accede to the union's application in respect of the five employees at this stage. I am reluctant to dismiss the application.

65. What I have decided is to direct the company to carry out a further process for the classification of the five employees that includes adherence to the relevant provisions in the award.

66. Following such process, of course, the matter would be relisted on the advice of the union to deal with the application.

67. The greater transparency and consultation that occurs in any such process may provide an outcome that minimises union concerns.

COMMISSIONER

Appearances:

W Friend for The Australian Workers' Union

S  *Wood*  for Kinetik Energy

Hearing Details:

1998

8 September

16 September

10-11 December

1999

29 January

29 March

Decision Summary

		Classification - <u>re-classification</u> - <u>grading of jobs</u> - various employees, oil and gas industry - Commission previously found no jurisdictional barriers to application [Print Q3712] - AWU argued Kinetik, successor of former Gas and Fuel Corporation (GASCOR) failed to maintain same gradings of seven staff members as previously applied at GASCOR - AWU aggrieved as not included in process - argued actions at variance with Gas Industry (GASCOR) Award 1994 - seven staff gave evidence re whether performing substantially similar work to that at GASCOR - <u>held</u> - order to be made re-grading two employees - company to be directed to carry out further processes re correct grading of other five employees - matter to be relisted on advice of AWU.
The Australian Workers' Union and Kinetik Energy		
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