



**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**

**10.15 AM, THURSDAY, 17 AUGUST 2023**

**Continued from 14/04/2023**

PN1

THE COMMISSIONER: Good morning, parties. I'll take the appearances, thank you.

PN2

MS DALTON-BRIDGES: Dalton-Bridges, H.

PN3

THE COMMISSIONER: Please stand, thank you.

PN4

MS DALTON-BRIDGES: Sorry. Dalton-Bridges, H, for the applicant. And Nguyen, P, for the applicant also.

PN5

THE COMMISSIONER: Thank you. Thanks, Ms Dalton-Bridges, Ms Nguyen. Yes.

PN6

MR WILLIAMS: Yes, good morning, Commissioner. Williams, initial D. Pursuant to permission which has been granted. And this is Mr Gleeson, initial A, for the respondent, thank you.

PN7

THE COMMISSIONER: All right, thanks, Mr Williams and Mr Gleeson, thank you. All right, we have a long list of witnesses to get through over two days. So I'm not sure why you're seated on that side of the room. But anyway.

PN8

MR WILLIAMS: I think we were here first. I'm to blame for the – I'm sorry.

PN9

THE COMMISSIONER: You're messing with my head.

PN10

MR WILLIAMS: Very happy to relocate, Commissioner.

PN11

THE COMMISSIONER: No, it's fine, I'll manage. All right, we were having some technical issues but hopefully that won't prevent the internet usage. So who's your first witness, Ms Dalton-Bridges?

PN12

MS DALTON-BRIDGES: Commissioner, our first witness is Mr Hurndell. So I will just tell him we're ready for him now (indistinct).

PN13

THE COMMISSIONER: Excellent, very good.

PN14

MR WILLIAMS: Commissioner, just before we get to the evidence. Just an observation I wish to make on the record. I'm sure you're familiar with the material, you will have seen that there is a – a number of the witnesses on both sides give evidence which, if a strict orthodox approach was taken to developments, there might be an objection, for example, subjective release and the like. There will be approaches that we were going to take or prefer to take. It is not pertaining to (indistinct) objections, we've got enough to get through as it is. But simply to deal with relevance and weight as part of our submission.

PN15

THE COMMISSIONER: Of course, very good. Thank you. Ms Dalton-Bridges, can you move your microphone closer. Perhaps you'll be – I'll leave it to you whether you stand when dealing with witnesses via video. I will require you to stand when we have witnesses in our new witness box, over here. But please move the microphone closer. I've been told it's a little bit hard to hear you.

PN16

MS DALTON-BRIDGES: Sure. Certainly, Commissioner. Good morning, Mr Hurndell.

PN17

MR HURNDELL: Good morning.

PN18

THE COMMISSIONER: Now, Mr Hurndell, it's Commissioner Hunt here. You're giving evidence via way of video. I'll have my associate have you take an affirmation. So please listen to my associate, thank you.

PN19

THE ASSOCIATE: Thank you, Mr Hurndell, could you please state your full name and address.

PN20

MR HURNDELL: Stephen Ray Hurndell, 13 Red Penda Court, Norman Gardens, Rockhampton, Queensland.

**<STEPHEN RAY HURNDELL, AFFIRMED [10.19 AM]**

**EXAMINATION-IN-CHIEF BY MS DALTON-BRIDGES [10.20 AM]**

PN21

THE COMMISSIONER: All right, over to you, Ms Dalton-Bridges.

PN22

MS DALTON-BRIDGES: Mr Hurndell, can I just have you confirm for me that the statement before you, which is in the digital Court Book – I'm not sure if you've got access to the digital Court Book, but you do the statement. That your statement at pages 1, 2, and 3 were prepared by yourself?---Yes.

\*\*\* STEPHEN RAY HURNDELL

XN MS DALTON-BRIDGES

PN23

And how many annexures, Mr Hurndell, have you got there with you?---Four.

PN24

Four. And those annexures were also prepared by yourself?---Yes.

PN25

And that your signature is on the end of your statement and the annexures, Mr Hurndell?---Yes.

PN26

Right. Thank you.

PN27

THE COMMISSIONER: Is it true and correct, Mr Hurndell?---Yes.

PN28

Any changes that you wish to make to your statement?---No.

PN29

Very good. You wish that to form part of the evidence, Ms Dalton-Bridges?

PN30

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

PN31

THE COMMISSIONER: All right. I'm not going to mark each statement separately. They'll be in the Court Book, and at the end of the hearing, I'll likely admit the whole Court Book unless there's parts that I don't admit, okay. All right, any other questions that you have of him, Ms Dalton-Bridges?

PN32

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

PN33

THE COMMISSIONER: Very good. All right, you'll be asked questions in cross-examination now, thank you, Mr Hurndell?---Yes, thank you.

**CROSS-EXAMINATION BY MR WILLIAMS**

**[10.22 AM]**

PN34

MR WILLIAMS: Thank you, Commissioner. Mr Hurndell, my name is Williams – Dan Williams. I'm the advocate for the respondent. I hope you can hear me okay?---Yes, a little breaky up here but it's – I can make it out, (indistinct).

PN35

I'll see if I can make it a bit better?---I think it's the internet connection.

PN36

I see. Well, feel free to raise a hand if at any time you haven't heard what I've said, Mr Hurndell?---Okay.

\*\*\* STEPHEN RAY HURNDELL

XXN MR WILLIAMS

PN37

Mr Hurndell, I understand from your statement that you were involved in the 2016 negotiation for the agreement we're talking about today?---That – that's correct. I came and after being nominated as a delegate. And originally, I believe, Matt Green was the delegate at the start of the negotiations. I think on that particular negotiations, there was quite a number of changes through the – through the negotiation before it was completed. Just about everybody who began the negotiation wasn't there at the end.

PN38

I think that's the case for both sides, Mr Hurndell. You'd probably agree with that, wouldn't you?---That's correct.

PN39

Yes. It makes it difficult. So your evidence is that you've been working for Armaguard since 2012?---Yes, it was – it was around – excuse me.

PN40

Have we lost you, Mr Hurndell?---Yes – yes, I'm coming back, I think. The internet dropped out for a moment.

PN41

Okay?---Can – can you still hear me okay?

PN42

Yes, we can hear you quite well, actually?---Okay, I've lost the video, but, yes, so – what was the question again, I'm sorry?

PN43

Just confirming what you said from your statement, that you'd been working with Armaguard in Queensland since 2012, I think?---Twelve. Armaguard, correct. Yes, I think that part of that, it was work point to point.

PN44

I think that's probably right?---Yes.

PN45

And you were an organiser with the TWU for at least some of the 2016 negotiation?---I – I was a delegate for the (indistinct) - - -

PN46

A delegate, sorry. Yes, you're now an organiser?---(Indistinct). Yes, yes, that's correct.

PN47

Okay, hopefully the record got most of that. So you will have been familiar with the agreement which was in place before 2016, which was the 2015 agreement? I'm sure it's a while since you've seen it, but you would have been familiar with it at the time?---Yes – yes, correct, at the time, yes. It has been a while since I've seen that.

\*\*\* STEPHEN RAY HURNDELL

XXN MR WILLIAMS

PN48

I know. Look, I accept that. And I accept you don't have a copy in front of you. But I just wanted to read you an extract from what the clause, in relation to meal breaks said, in 2015. I'll read it to you.

PN49

THE COMMISSIONER: And is this the country agreement back in - - -

PN50

MR WILLIAMS: No, it's the 2015 Metropolitan Branches Road Crew. So it's the one which was in place prior to 2016. The one which was under negotiation. And I'd be very happy if we can find a way to get Mr Hurndell a copy. I do have a spare copy.

PN51

THE COMMISSIONER: But wasn't there the country agreement in 2015?

PN52

MR WILLIAMS: I think it's – well, I may not have all of the history in my head – but historically it has been split between country.

PN53

THE COMMISSIONER: Yes.

PN54

MR WILLIAMS: Which is everything but Brisbane and the metropolitan.

PN55

THE COMMISSIONER: And it wasn't until 2019 that they came together.

PN56

MR WILLIAMS: I think that's right. But certainly, back in 2016 there were two separate agreements.

PN57

THE COMMISSIONER: Right, so you're going to be referring to the 2015 country agreement, aren't you?

PN58

MR WILLIAMS: No, I'm going to be referring to the 2015 metropolitan agreement which was replaced by the 2016 metropolitan agreement.

PN59

THE COMMISSIONER: Right. But he's in Rockhampton, would he have any knowledge of that?

PN60

MR WILLIAMS: Well, he might not. But he was negotiating, it appears, or assisting to negotiate the 2016 metropolitan agreement.

\*\*\* STEPHEN RAY HURNDELL

XXN MR WILLIAMS

PN61

THE COMMISSIONER: He's a delegate in Rockhampton.

PN62

MR WILLIAMS: Well, he's given evidence that he was negotiating the metropolitan agreement.

PN63

THE COMMISSIONER: Is that right?---I – I was the delegate at the Murarrie branch in Brisbane at the time.

PN64

Right?---I've only recently moved to Rockhampton in the last three years once I took over as a (indistinct) for the Transport Workers' Union.

PN65

Okay, thank you?---That's okay.

PN66

MR WILLIAMS: Commissioner, I've only got brief questioning, but it might – I'll pass Ms Dalton-Bridges a copy of the agreement I'm referring to. It's the 2015 one. And perhaps one for you as well, Commissioner. Unfortunately, I don't – Mr Hurndell won't have a copy in front of him. Obviously, that can be arranged if necessary. But I was going to read a couple of very brief clauses to him. Mr Hurndell, if you're happy to proceed in this way, let me know if you're not, in which case we'll try and get a copy of the clause itself to you. I'm sure we could manage that?---No, (indistinct), that's fine.

PN67

Yes, I wanted to read to you from the meal break clause, as it was in 2015. The one which is really – well, it was amended and has led to these proceedings. Okay, and let me know if this is not working for you. But the clause in 32.1, firstly provides that each employee is allowed an unpaid meal break of 30 minutes. And then there are some other qualifiers. But then there's a clause, 32.2, which is the relevant one - break inside armed vehicle. And it says this, 32.2.1:

PN68

*Where an employee is required to remain inside an armed 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.*

PN69

Now, that's what became known as the 'lunch in truck' rules, isn't it?---I believe 'lunch in truck', yes. There was probably some history prior to that, Mr Williams, where a three-man crew, which I think the 'lunch in truck' may have come out of at one stage. But that's prior to the (indistinct). But, yes, I agree (indistinct).

\*\*\* STEPHEN RAY HURNDELL

XXN MR WILLIAMS

PN70

Okay. I'll come to that. I think the three-person crew clause is still there, in fact. But I will come to that. Did you ever work as part of a three-person crew, by the way?---On occasion we did, yes. Because if, for instance, the security system inside the truck wouldn't allow the internal door or the (indistinct) person would remain inside the vehicle to manually operate that. So if a – if the lock outside was faulty, you would sometimes operate a three-man truck, if the (indistinct), you had to have the seats available inside, of course, for seating et cetera. We did have them at the time.

PN71

Yes. Well, clause 32.2.2 of the 2015 agreement, and I think it's roughly the same still, says that – well, firstly, it says employees required to spend time in the vehicle as set out in the clause I read to you before:

PN72

*Will be paid a minimum of 15 minutes at time and a half.*

PN73

And then it goes on to say:

PN74

*Accordingly, employees working on a three-person crew will be entitled to a 45-minute meal break.*

PN75

You're probably familiar with that?---Yes, I'm familiar with that wording. Yes. I'm not sure if it's in the current agreement as that.

PN76

There is reference to - - -?---I believe, yes, I believe it was in the 2015 agreement like that.

PN77

Right. And so you'd agree that for three-person crews, they would get a 45-minute meal break and they would rotate through the lunch break so each of them would spend 15 minutes in the truck, approximately?---Each (indistinct) required, so there would generally be at least be one person in that truck at a time.

PN78

And so that allowed the other two to go and go about their business - - -?---Yes.

PN79

- - - outside the truck?---Yes, and then they came back and swap over.

PN80

Right?---Correct.

PN81

And the payment, under that regime, was for the 15 minutes spent in the truck?---Yes.

\*\*\* STEPHEN RAY HURNDELL

XXN MR WILLIAMS



PN82

Yes. And the clause that we had a look at before - and I will just read it again, Mr Hurdell; I just want to make sure that you know what I'm talking about. It's the clause that I read before, but it's the - it says:

PN83

*Where an employee is required to remain inside an armoured vehicle at the direction of Armaguard for security reasons for part of a meal break, the employee will be paid at the rate of time and a half for the time spent inside the vehicle.*

PN84

So you would agree that under that clause, the part of the lunch break which is paid is the part - is the time which is spent inside the vehicle?---Yes.

PN85

And you would also agree that, under the clause, at least, then - it's different now, of course - but at then, there needed to be a requirement that they spend part of the lunch break inside the vehicle, at the direction - - -?---(Indistinct) - - -

PN86

- - - of Armaguard?--- - - - that we had received.

PN87

Yes - at the direction of Armaguard?---That is correct. It wasn't, like, a single direction; it was directed - you were directed to stay in that vehicle.

PN88

Yes?---As opposed to a direction on the day, it was part of the agreement that we did - - -

PN89

Yes?--- - - - all the time.

PN90

But you - but, fundamentally, the payment was to compensate drivers for being - sorry - crew members for being required to spend that 15 minutes inside the truck, at that time?---Correct. It was to (indistinct).

PN91

Yes, okay. So if we can now go to your statement. What you say at paragraph 9 - so - - -?---Yes.

PN92

- - - take your time. You say that the employer, which is - that's my client, Linfox Armaguard - raised that they wanted to remove the entitlement to what they called the 'lunch in truck payment'. Can you see that?---Yes.

PN93

And then you also - - -?---Yes.

\*\*\* STEPHEN RAY HURDELL

XXN MR WILLIAMS

PN94

You go on to say - and I will come back to this - the employer's position during the negotiations moved from removing the payment to decreasing the payment over three years?---That's right.

PN95

Yes.

PN96

So do you agree that the Linfox Armaguard position was not that - at that time; it changed, of course, but at that time - was not that drivers would be told, or directed, not to have their lunch in the truck, but rather than Linfox Armaguard wanted to stop paying for it?---That's correct. They could still direct you to stay - have lunch in the truck, I would have thought. It would be a reasonable request.

PN97

But their position was that if - to the extent they did, they didn't want to pay for it any more?---That is correct.

PN98

Yes. Thank you. Now, at paragraph 11, you say that the employees' position - so I assume that that's as you understood your members' position - was that as they had to carry the firearm on their body at all times, the firearm was signed out to them, that they needed to be paid the entire time they carried the firearm?---Yes. So I was employed as a cash in transit security guard at the time, as well as being the delegate, so part of my duties, as the others were aware, was to carry a firearm. I believe the legislation at the time for Queensland would - weapons licence (indistinct) was that you were to carry a firearm only whilst you were working. And our issue was that firearm - whilst we signed it out, we were in possession of that firearm until such time it was returned to the depot and signed back in.

PN99

Okay. But, of course, back then, you had been required to keep your firearm on you at all times, including for the whole of your lunch break; that's right?---Correct.

PN100

Yes?---Yes.

PN101

So, back in the day, when Linfox was paying - Linfox Armaguard - was paying for 15 minutes, they weren't paying anything for the time when the crew members were outside the truck, even though they had to carry their firearm?---That's probably correct, yes.

\*\*\* STEPHEN RAY HURNDALL

XXN MR WILLIAMS

PN102

Yes. So, if that was an accurate - if you've accurately recorded what employees' position was, it had never been that way, had it? Linfox Armaguard had never treated the time outside the truck as work which needed to be paid?---I - I can't

answer that truthfully, because I don't know what the original arrangement was, about how that came about. I wasn't party to that. I can give you my assumption - but it's only an assumption - of how that was operating.

PN103

Well, if we just go to the clause itself - take a three-person crew, 15 minutes each in the truck, 30 minutes outside the truck - they were paid for the time inside the truck, but not outside the truck; that's correct - that must be right, mustn't it?---Yes.

PN104

Yes, okay. And as you say in paragraph 16 - you say, eventually the employer abandoned the removal of the 'lunch in truck' payment. Can you see that?---Correct, yes.

PN105

So your understanding is that Linfox Armaguard didn't press its claim that it not pay for the time spent in the truck?---Correct.

PN106

And so its position was that employees would still be paid for their time spent in the truck?---Correct.

PN107

Yes. In other words, you had really reached an agreement to apply the status quo?---Correct.

PN108

Yes. You've got a couple of documents on your statement, Mr Hurdell, so I just wanted to ask you questions about them. They're the documents, annexure SH1 and SH2?---Yes. Yes. I have them in front of me.

PN109

Yes. So can I proceed on the basis that the - these reflect proposals which Linfox Armaguard had put at various times, and this was how you took it to the employees, or at least to the members, to see whether they agreed with them or not?---Yes, so I think these were taken from the log of claims from both parties.

PN110

Yes. So if we see the one in April - well, sorry?---April - March?

PN111

Can I also suggest - and I don't know if this is right, but you might recall - is it - are we looking at two different groups of employees here? So is it possible that the top one is metropolitan and the bottom one is country? And it's fine if you can't remember; I'm just trying to clarify?---Which one are we looking at, sorry?

PN112

SH1. So - - -?---Yes.

\*\*\* STEPHEN RAY HURDELL

XXN MR WILLIAMS

PN113

- - - it had - it's - on the same page, you've got 'Ballot held 28 April 2016'?---That - that - okay.

PN114

Or is it just the - is this all related to metropolitan?---Can I just ask which - what was the date again, sorry?

PN115

Yes, the - - -?---(Indistinct).

PN116

Yes, SH1 appears to be the document relevant to a ballot which was held - I assume, of the members - on 28 April 2016?---Okay. Okay. Okay.

PN117

And there - - -?---Yes, got it.

PN118

- - - seems to be a duplication, so it may be that's all there is - it's just duplicating - - -?---I - no, I - it's a duplication because it was a - it was prepared by me, and the idea was to actually fold that in half, so you have two ballot (indistinct).

PN119

I see. I see, yes?---Yes.

PN120

I see, so you would cut that in half - - -?---So - - -

PN121

You would cut that up and give it to two employees?---Yes. And (indistinct) that I was able to find (indistinct) on my computer, but - I had (indistinct) but I was able to find something that I thought might be able to assist - - -

PN122

All right. Thank - - -?--- - - - the court in coming to a decision.

PN123

Thanks for that. So the Commissioner can proceed on the basis that this is a photocopy of a document, and on that document, there happen to be two copies of the same ballot - - -?---Correct.

PN124

- - - proposal, and they both relate to metropolitan?---Correct.

PN125

Okay, thanks.

PN126

THE COMMISSIONER: Do they, though?

PN127

MR WILLIAMS: Well, I will continue the questioning - - -

PN128

THE WITNESS: Yes.

PN129

MR WILLIAMS: - - - but I was - - -

PN130

THE COMMISSIONER: Because you're talking about the 130 per cent normal time, 115, 100 per cent - that happened to country, didn't it, not metro?

PN131

MR WILLIAMS: Well, it - Commissioner, that's true. But, as I will particularly take Mr Fernandez through, in the course of the negotiation for metropolitan, there was a proposal discussed for a step down, as well.

PN132

THE COMMISSIONER: Okay. Back in April 2016?

PN133

MR WILLIAMS: That's correct.

PN134

THE COMMISSIONER: Okay.

PN135

MR WILLIAMS: We'll come to that, but that's my understanding of the record. Now, so, Mr Hurdell, if you then go to SH - well, sorry; I beg your pardon. I will go back. I take it that those proposals - well, sorry - the proposal on 28 April 2016 was not accepted by members?---I don't believe it was.

PN136

And so we can take it that at that time, they didn't accept what seems to be a step down - a proposal for a step down in the 'lunch in' - in the 'lunch in truck' payment?---Correct.

PN137

Yes. So the next one is SH2. That's a ballot held on 13 May 2016?---Yes.

PN138

Now, is this a proposal which was proposed by Linfox Armaguard after they abandoned the removal of the 'lunch in truck' payment, as you said - as you point out in paragraph 16?---I - Mr Williams, you are - drawing me back to then - I can't remember, because it's eight years ago. I'm - - -

PN139

I accept that, and I - - -?---Well, I - I would have to compare that to the - some of the other notes and information that might be available, but I - honestly, I can't remember that - when that change took place.

PN140

It might help if I could direct you back to paragraph 16, because you - that seems to be what you're saying - - -?---Yes.

PN141

- - - Mr Hurndell. I - let me know if you really can't recall, but you say, 'Eventually, the employer abandoned the removal of the "lunch in truck" payment', and then - - -?---Yes.

PN142

- - - you refer to SH2?---Yes, I (indistinct). Yes.

PN143

So I would assume that SH2 was - reflected that the employer had abandoned its claim?---Yes.

PN144

Yes?---And I think - I think that's (indistinct) than the - no, that's wrong; that's 21 March. I think that's correct, sir.

PN145

Yes, okay. So what the members were told in relation to the ballot on 13 May - sorry; I should ask you this: is that the one which was eventually accepted by the members?---Again, I can't tell you that, because I can't remember that one.

PN146

I understand. It - - -?---But - - -

PN147

- - - appears to be the - - -?--- - - - I assume the - - -

PN148

I'm sorry, Mr Hurndell; I didn't mean to interrupt - it appears to be the deal that was eventually - - -?---Yes.

PN149

Made its way into the agreement, because of the 2.3 per cent. But you see that the members there were told, 'lunch in truck', no change?---Correct.

PN150

And so that reflected, didn't it, that Linfox Armaguard had made a tilt - - -?---Had - - -

\*\*\* STEPHEN RAY HURNDELL

XXN MR WILLIAMS

PN151

- - - at removing it - removing the payment; you had beaten them back; and then Linfox Armaguard had decided not to change the benefit?---Yes. So these ballots

were held for the negotiation team's benefit, to make sure that we had a firm understanding of what the members were looking for.

PN152

Yes?---So these were not necessarily ballots that the company held, or were in any way - with anything to do with the company. It was for our own purposes, to make sure that we were negotiating as our members were requesting.

PN153

I accept that. Of course, it's not the ballot that the employer had to progress to get - - -?---Yes.

PN154

- - - the agreement approved. But I just wanted to check there, what you were telling your members - perhaps the employees as a whole, if they got this - or maybe you hadn't - maybe they were all members. But the members were being told that - 'lunch in truck' - no change - you had - that the employer had withdrawn its claim?---Correct.

PN155

And so they would have assumed that 'lunch in truck' would be on the same terms as it was before?---Yes.

PN156

Yes, okay?---Yes.

PN157

Thank you. That's all the questions I have for Mr Hurndell.

PN158

THE COMMISSIONER: All right. Anything arising, Ms Dalton-Bridges?

PN159

MS DALTON-BRIDGES: Yes, Commissioner. Are you happy for me to remain seated - - -

PN160

THE COMMISSIONER: Yes. Well, the - - -

PN161

MS DALTON-BRIDGES: - - - at this point?

PN162

THE COMMISSIONER: Well, when we have people in person, I would ask you to stand, but you're comfortable to sit.

**RE-EXAMINATION BY MS DALTON-BRIDGES**

**[10.43 AM]**

\*\*\* STEPHEN RAY HURNDELL

RXN MS DALTON-BRIDGES

PN163

MS DALTON-BRIDGES: Mr Hurndell, just continuing on from that point from Mr Williams, and just for clarity, at the end of the agreement, in 2016, there were two clauses, though, weren't there? There was the 'lunch in truck' clause, which had always been there; and, if you have a look at your statement in point 17, there is this additional clause?---For a new meal break prescribed, yes.

PN164

What did that mean to you, clause 17? What was the difference between the previous clause, where you had your lunch in the truck, and now this additional clause, which also sat within the meal break provision?---So, at the time, as Armaguard were looking to remove the 'lunch in truck', we had concerns about - because of the use of 'direction'. The (indistinct) we had at that time, around 2015, 2016. There were robberies and terrorist actions taking place and the concern was that we couldn't sit into the places because of the threat, to either being (indistinct) disarmed and that sort of thing. So it became for security reasons and the security reasons is that they were under tension. The firearm is a valuable piece of equipment and so we were trained in firearm retention during our (indistinct) each year. The purpose was that to have our (indistinct) to be paid for part of that having that in the truck was because we couldn't go about and settle the public replies as most people would: (a) they're (indistinct) having a firearm; (b) you don't have the same situation in the VMS that you would have if you were - whilst you were guarding, because whilst you are guarding, the guard that's predominantly doing the guarding while the other person is working, especially on ATMs in a public place, is you place yourself in a position where your back is covered so you're only looking forward and to the sides. When you're sitting at a table you leave your back quite often exposed and therefore you don't - and you're concentrating on eating and other things. You don't have the same situational awareness.

PN165

So (indistinct) place where you can sit and eat comfortably, such as a truck, so our consideration was that we were wearing a firearm, that's part of our work, it's part of our duty. Therefore, we have to (indistinct) we can't go about our normal business as (indistinct). We ate in the truck due to (indistinct).

PN166

So just for clarification - - -?---(Indistinct) business.

PN167

THE COMMISSIONER: Mr Hurndell - - -?---Sorry, I missed that. Yes?

PN168

MS DALTON-BRIDGES: Sorry, just for clarification, Mr Hurndell, what you're saying is you were no longer directed to sit in the truck. However, crew members often chose to sit in the truck?---Correct.

\*\*\* STEPHEN RAY HURNDELL

RXN MS DALTON-BRIDGES

PN169

However, you weren't directed - that wasn't what the payment was for, as you understood it?---No, and I think it's covered later on in the 2019 agreement, where



of course you can be directed to stay in the truck for lunch. It's a reasonable request because there could be issues happening that we don't know about and that happened, where we'd been in a local shopping centre where there may have been an armed hold up or an armed robbery or there could be a police emergency and we've been directed by our supervisor to remain in the truck. So that clause still applies as being directed but the main issue, I believe, was the meal break as we're talking about in clause 17, was because we're carrying a firearm and it's safer to stay in the truck to eat your meal as opposed to sitting in general public.

PN170

But the difference between what had been prior in 2015 and what was negotiated in 2016, was that you no longer had to sit in the truck but you were going to given 15 minutes' payment, Mr Hurndell.

PN171

MR WILLIAMS: I object.

PN172

THE COMMISSIONER: Just wait, thank you. We have an objection here, Mr Hurndell. I just need to deal with that first, thank you.

PN173

MR WILLIAMS: It's plainly a leading question but the one before is a leading question. I was happy if we get the answer because Mr Hurndell plainly – his evidence plainly is that the payment remained associated with him sitting in the truck.

PN174

THE COMMISSIONER: Ms Dalton-Bridges, you need to be careful with your leading questions.

PN175

MR WILLIAMS: Ms Dalton-Bridges is just trying to get a different answer with a different leading question.

PN176

MS DALTON-BRIDGES: Mr Hurndell, if you could read paragraph 17, the last section in inverted commas – can you read that section?---Yes, 'On behalf of the witness (indistinct) employees will be paid at the rate of time and a half for a minimum of 15 minutes for security reasons'.

PN177

Right – there's nothing to do with the truck?

PN178

MR WILLIAMS: I object.

PN179

THE COMMISSIONER: Ms Dalton-Bridges, you're going to need to ensure that you don't ask leading questions, thank you. You need to ask open questions.

\*\*\* STEPHEN RAY HURNDELL

RXN MS DALTON-BRIDGES

PN180

MS DALTON-BRIDGES: If we go back to what you're saying, though, Mr Hurndell, in paragraph 13, is what you say in paragraph 13 that you need to access cafes, food courts and takeaways, that you're accessing public places during the paid meal break and that was the reason for the payment. Do you want to discuss that as you've written it, Mr Hurndell?

PN181

MR WILLIAMS: There's nothing about payment in paragraph 13.

PN182

THE COMMISSIONER: Look, I won't have you answer Ms Dalton-Bridges' question at the moment. Mr Hurndell, do you understand it was Mr Fernandez who drafted the clause that exists in the 2016, '19 and '22 agreement?---I believe it was, yes.

PN183

So you don't have the benefit of the court book but page 460, looks like it was his words that completely changed the clause as it existed and what do you understand that to be? You think there's some sort of protection, do you, of the requirement not to direct?---Sorry, can you explain that a little bit more?

PN184

I don't think you have the benefit of the court book, do you?---No.

PN185

Well, it appears as though Mr Fernandez proposed some wording and Linfox accepted it. That's my understanding and I'm happy to be corrected as this hearing progresses but it deleted the clause 32.2 break inside armoured vehicle, which had been the prescription and then brought it all up under meal breaks and made it all a bit of a jumbled mess. But what do you think it was for?---It's not about having the lunch in the truck, but it's for the security reasons. So we carry those firearms for security reasons, to protect ourselves. Now, it also means that there are times that we can't – we need to find a place that we can also have a safe (indistinct) and part of that is those security reasons are also (indistinct). Once you're carrying a firearm you can't attend a licensed premises unless you're (indistinct). You can't – we (indistinct) or anything such like that. So it's a responsibility to carry a firearm and so that we are not working at that time, that there's (indistinct).

PN186

Well, you're not getting paid for either the additional 15 minutes or additional 30 minutes of the meal break and of course probably visiting public toilets throughout the shift as well?---Yes.

PN187

With a similar exposure, you'd imagine?---That's correct.

PN188

To somebody trying to steal the firearm?---That's correct.

\*\*\* STEPHEN RAY HURNDELL

RXN MS DALTON-BRIDGES

PN189

But your evidence at paragraph 11 was that you said you need to be paid for the entire time they carry the firearm. That's not the case. I mean, somebody could, if they wanted to, spend half an hour of their meal break in public, couldn't they?---I would be happy to accept to be paid for the full amount of time we carry the firearm but unfortunately that's in the enterprise agreement. We had to negotiate an outcome.

PN190

Yes, and the earlier arrangement was if employees were directed, if they were required to remain inside, they would be paid but that changed in 2016 and it looks as though it was Mr Fernandez's wording that was inserted. It was put to you that that was maintaining the status quo. Do you think it was maintaining the status quo?---Yes, because I think there's two parts to the wording in that agreement. One was lunch in truck and one was to do with the meal break. Is that (indistinct), I believe so.

PN191

Well, at 460 here I have: 'Break inside armoured vehicle'. Parties, is that – was that as it was in the 2015 agreement?

PN192

MS DALTON-BRIDGES: '15.

PN193

THE COMMISSIONER: Right, so in the 2015 agreement, Mr Hurndell, you arguably only received that 15 minutes if you were required to remain inside the vehicle – well, no, perhaps that's longer. I don't know?---It was 15 minutes at time and a half and we were paid that. I know the wording says, 'directed', but it was a continuing payment, it wasn't a direction, as I said, (indistinct) particular day.

PN194

Right, so my question is in the 2016, now '19, now '22 agreement, if you're not required by the employer to spend 15 minutes in the vehicle, should that attract the payment? If the employer says they don't require you to – they're comfortable with you – you could sit on the ground next to the vehicle with your back against the vehicle if you really wanted to. It would be uncomfortable but - - -?---I appreciate that. When the consideration for removing that, I believe Mr Darren Jones at the time said they didn't believe that the vehicle needed to be guarded during the lunchbreak, therefore they (indistinct) regard to the safety of - - -

\*\*\* STEPHEN RAY HURNDELL

RXN MS DALTON-BRIDGES

PN195

Sorry – can you say that again, please? We missed that. Sorry, we missed all of that. Can you please start that answer again, thank you?---When Mr Darren Jones, I believe removed the direction to have the lunch in the truck, it was because they believed the vehicle didn't need to be guarded at that stage. The vehicle had enough safety systems within it to not need to be guarded by the guards at the time but that doesn't remove the safety that's required for the guards,

because they still carry a valuable piece of equipment and for security reasons, they payment was made at the – for 15 minutes at time and a half (indistinct).

PN196

Okay, let me go back to this then: the 2015 metro agreement, which is summarised at page 1015, parties – it has a distinct heading and it says, 'Break inside armoured vehicle'. It says at 32.2.1: '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'. They will get – at 32.2.2, it's a minimum of 15 minutes at time and a half. So you understood that was the entitlement in 2015. Did you expect the 2016 agreement to make improvements to employees' conditions, because essentially that is the TWU's position here, is that employees can go about freely for 30 minutes and get the entitlement. So it looks as though it's an improvement to conditions?---(Indistinct).

PN197

You earlier gave evidence that the status quo was maintained but the TWU - - - ?---I missed that.

PN198

- - - position is that employees can do essentially whatever they wish and still get the 15 minutes?---I don't believe employees are free to do whatever they wish. I don't know where that's come from. The company may think that they can go and do whatever they wish but that's not the case.

PN199

But that is the case. Employees are not required to remain in the vehicle for 15 minutes. That's the evidence of all of the respondent's witnesses?---I'm not saying - - -

PN200

In terms of – obviously not going into pubs and not gambling, of course. We understand that. But they're not required to sit for 15 minutes. You accept that, don't you?---That is correct. They're not there to guard the truck. This is about the safety of the individual.

PN201

So in the 2016 agreement, the changes in the words provide a more beneficial entitlement to employees than the 2015 agreement?---I wouldn't have thought about that. The part I believe - I don't know. The 15 minutes - the payment - as far as the employee was concerned, they didn't receive any additional payment. They didn't get paid (indistinct). They got paid once, for that particular - like, a 'lunch on truck' (indistinct) 15-minute period. I think the interpretation of how that came about has changed. But - - -

\*\*\* STEPHEN RAY HURNDALL

RXN MS DALTON-BRIDGES

PN202

But arguably, if you're right, it provides more freedom for the same payment. And that was never flagged to members as a reason to vote the

agreement up, was it? It was no change?---There was no change, technically, to how the - the guard would operate in the course of the day.

PN203

But if a member is - I'm dealing with the 2022 agreement. That's essentially what this dispute is about. If a member - - -?---Yes - - -

PN204

- - - didn't spend 15 minutes in the vehicle having lunch, they're not in trouble, are they?---No.

PN205

So they do have full freedom, other than some restrictions, and that is an improvement on the 2015 agreement, isn't it?---They - I guess, they could have, in 2015, had the same freedoms, as well, as long as they were given a direction at any given time. But I haven't thought about it like that. I just don't know if I would agree, but - - -

PN206

Well, the 2015 agreement is very clear that you only get it if you're required to be in the vehicle, and I guess, that was the practice at the time?---No. No, you got it - - -

PN207

So was it just - - -?--- - - - regardless - - -

PN208

It was just paid - okay. So the employer just paid it, whether they had an - - -?---It wasn't - - -

PN209

- - - obligation to or not?---Yes, there was a - it was paid regardless. As an allowance or something - I don't know. But I - because how it was set up - I wasn't there at the start, so I don't know how it was originally set up. I was dealing with it afterwards. So I - that was paid, at the time, regardless.

PN210

Right. Okay. Any questions, Mr Williams, arising?

PN211

MR WILLIAMS: Just one.

**FURTHER CROSS-EXAMINATION BY MR WILLIAMS [11.03 AM]**

PN212

MR WILLIAMS: Mr Hurdell, when you told the Commissioner that it was just paid regardless, it's really the case, isn't it, that the employer didn't - didn't monitor it. They didn't go around the trucks, dispersed around the city, making sure that people were actually spending 15 minutes in the truck. That's probably a fair way to put it, isn't it?---Yes.

\*\*\* STEPHEN RAY HURDELL

FXXN MR WILLIAMS

PN213

Yes. That's all I have.

PN214

Okay. Thank you. Ms Dalton-Bridges, anything arising?

**FURTHER RE-EXAMINATION BY MS DALTON-BRIDGES [11.03 AM]**

PN215

MS DALTON-BRIDGES: Mr Hurndell, you're a full-time employee, you've said on the record, which is perhaps a leading question, but, I think - - -?---Yes.

PN216

- - - easy to confirm. What had you been able to negotiate, in terms of the meal break, if you explain that in terms of the change, that moved away from 'lunch in truck'? What had been the change in payment?---Can you just repeat that? It's just backing up a little bit. I can't quite - - -

PN217

Sorry. What had been the change in payment? You said earlier that 'We were looking for payment for the entire shift, including the entire meal break', and you were already a full-time worker, and so it was an unpaid meal break. So what did you feel had been negotiated, in 216, as per the meal break?---I think I - I think I got most of that. So the - the meal break was 15 minutes at time and a half for part of the - of the meal break, and that was paid because we were already a full-time employee, 38 hours a week, so if the employer had used that as part of (indistinct) hours, we would be inevitably finishing earlier. That (indistinct) people out on the road. But the actual payment remains at 15 minutes at time and a half.

PN218

Thank you, Mr Hurndell.

PN219

THE COMMISSIONER: No further questions, Ms Dalton-Bridges?

PN220

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

PN221

THE COMMISSIONER: All right, thank you. Thanks, Mr Hurndell. You're now excused from giving evidence. Thank you?---Thank you.

**<THE WITNESS WITHDREW**

**[11.05 AM]**

PN222

THE COMMISSIONER: Who's our next witness, Ms Dalton-Bridges?

PN223

MS DALTON-BRIDGES: Nathan Smythe, Commissioner.

\*\*\* STEPHEN RAY HURNDELL

FRXN MS DALTON-BRIDGES

**<NATHAN SMYTHE, AFFIRMED**

**[11.06 AM]**

**EXAMINATION-IN-CHIEF BY MS DALTON-BRIDGES**

**[11.06 AM]**

PN224

MS DALTON-BRIDGES: Good morning, Mr Smythe. Have you got your statement with you?---I do, yes.

PN225

Would you mind pulling it out, so that you've got it in front of you. Can you tell me how many paragraphs your statement is, please?---Twenty-three.

PN226

And did you prepare the statement yourself, Mr Smythe?---That is correct.

PN227

And is it true and correct?---It is true and correct; that's right.

PN228

Thank you.

PN229

THE COMMISSIONER: Any changes you wish to make to your statement, Mr Smythe?---Pardon me?

PN230

Any changes that you wish to make to your statement?---No, your Honour.

PN231

No, very good. All right. Any objection?

PN232

MR WILLIAMS: No, on the same basis that I said before, Commissioner, no.

PN233

THE COMMISSIONER: Yes, very good. Thank you. It will be included in the court book.

PN234

MR WILLIAMS: Yes.

**CROSS-EXAMINATION BY MR WILLIAMS**

**[11.08 AM]**

PN235

MR WILLIAMS: Good morning, Mr Smythe. My name is Dan Williams. I'm the advocate for the - for Linfox Armaguard?---Right, yes.

\*\*\* NATHAN SMYTHE

XN MS DALTON-BRIDGES

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN236

I just have a couple of questions for you?---Not a problem.

PN237

So you're quite a longstanding employee. Now, you've been a full-time cash in transit operator since 2000?---That's correct.

PN238

Yes. And you give some recollection of some history from paragraph 6. Originally, you all returned to the depot for your lunch break?---That is correct.

PN239

Was there any allowance paid during the lunch break then, or was it just all unpaid?---It was unpaid, back at the depot.

PN240

Right. And at that time, when you were in the depot, I assume that you and the truck are in the depot - you drive the truck into the depot?---Pardon?

PN241

You drive the truck - you used to drive the truck into the depot?---That's correct, yes.

PN242

And the depot is a secure place?---Yes.

PN243

So you're not interacting with the public?---No.

PN244

And the truck is not vulnerable to an external attack?---No, it's in the yard.

PN245

Yes. And at that time, you say, there were three-person crews and a 40-minute lunch break, but it would have all been unpaid, no doubt?---Pardon?

PN246

In paragraph 7, you say, at that time - this is when you were returning to the depot - you worked as three-person crews - 40-minute lunch break, and I'm assuming it was all unpaid?---I do believe do. It was a - - -

PN247

Yes?--- - - - long time ago, but yes.

PN248

Yes. And then, before you came to Murarrie - this is at paragraph 8 now - so you changed to two-person crewing?---That is correct.

PN249

But at that point, you're still returning to the depot for your lunch break?---That is correct.

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN250



Still unpaid?---That is correct.

PN251

Yes. And then you say - and you might be the only witness who goes back this far in the industrial history, Mr Smythe - there was a meeting in 2009, and you say it was agreed that the employer would pay armoured vehicle operators a 20-minute 'lunch in truck' allowance, at time and a half, if you didn't return to the depot for lunch?---That is correct.

PN252

And that's because, as the term says, you had to eat your lunch in truck for part of the lunch break?---Pardon?

PN253

You were - if it's a two-person crew - 40-minute lunch break - if that's what it was, then the - each crew member would spend 20 minutes in the truck?---That is correct.

PN254

And the other one - the other crew member was free to do whatever?---Yes, correct. Hop in and out, to swap - give each other time to have a toilet break. We tried to just - - -

PN255

Yes?---Yes.

PN256

So you - so 20 minutes in the truck, and that's what the allowance was for?---I do believe so, yes.

PN257

Yes, thanks. And there was no change - your recollection is that there's no change until 2016. I will just - Mr Smythe, it doesn't matter, for my - the purposes of my questioning, but it looks like, at some point, the lunch break went back to 30 minutes, unless you were a three-person crew?---Pardon?

PN258

It's there. It looks like, at some time before 2016, the lunch break was reduced to 30 minutes, unpaid?---Yes, that is correct.

PN259

Don't you recall when that happened?---Not really. Not - it's quite a long time ago.

PN260

I understand. But, in 2016, you said, you were able to negotiate a payment for 15 minutes a day, at time and a half, to be paid to armoured vehicle operators, for a meal break allowance, for security purposes. See that, at - - -?---That is - - -

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN261

- - - paragraph 12?

PN262

THE COMMISSIONER: You will need to give an oral answer there; it wasn't quite picked up?---Pardon, your Honour?

PN263

Do you have a hearing issue, Mr Smythe?---I do, your Honour. I'm deaf in my right ear, and - - -

PN264

In your - - -?--- - - - from the history in the truck, so I do - - -

PN265

Okay?--- - - - have a bit of ringing in my ear.

PN266

MR WILLIAMS: I'm sorry - - -?---So - - -

PN267

THE COMMISSIONER: Right, so we will all use loud voices, then, thank you.

PN268

MR WILLIAMS: I'm sorry - I'm sorry, Mr Smythe.

PN269

THE COMMISSIONER: You didn't answer - - -?---No, that's okay.

PN270

- - - the question.

PN271

MR WILLIAMS: Yes.

PN272

THE COMMISSIONER: You need to say yes or no to Mr Williams' last question?---My apologies. Could you please repeat the - - -

PN273

MR WILLIAMS: Yes?--- - - - question, sir.

PN274

So I'm just taking - drawing your attention to paragraph 12. You say, there was a negotiated meal break allowance, for security purposes?---That is correct.

PN275

Yes?---Yes.

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN276

Now, the security purpose is a requirement, or a practice, to guard the truck; correct?---The security purpose is what, sorry?

PN277

Well, when you refer to a security purpose in clause 12?---Yes?

PN278

That is a security purpose related to guarding the truck, isn't it?---No.

PN279

It's not?---The security purposes for that is being armed, and going for your toilet breaks, and coming back to the truck, and all that. You were basically - it was for - because you're always on duty, on guard; you're not back at the depot. So - - -

PN280

Right?---So you're heightened; you're not actually - you're basically having the - your break, but you're not. You're still on duty; you're still watching. So that was what the security purpose were for.

PN281

So that's your evidence?---Hey?

PN282

That's your - are you sure that's the evidence you want to give to the commission, that the security purpose is related to being out in public, wearing a firearm?---Yes, you're still on duty.

PN283

Right?---Yes.

PN284

So, up to that point, you had never been paid for that time when you weren't in the truck, had you?---And - what do you mean, exactly? Sorry, I - - -

PN285

Well, up to - - -?--- - - - don't understand.

PN286

- - - 2016, the - you - to the extent you had been paid anything for your lunch break, it was - it related to a requirement to be in the truck?---It wasn't a requirement, no, to be in the truck.

PN287

Well, I thought we just agreed that the - and we went through it in some detail - that the arrangement was, you would have one operator would spend 20 minutes in the truck, and the other operator could do what they wanted, and then you would swap?---And then you would swap, yes.

PN288

So it was related to time in the truck?---To a point, yes.

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN289

What do you mean, to a point?---Well, we were in the truck, but you were still on duty, and you were still armed, or - as you had your break, you were still on duty; you weren't back at the depot, relaxed, where you could kick back, and everything was fine; you were still vigilant. So - that's how it was.

PN290

Yes, but you - - ?---Yes.

PN291

But you had never been - certainly, before 2016, you had never been paid for that time out in the community, had you?---We had, until we got paid this - before that, we never got paid, because we always went back to the depot.

PN292

Well, no, no, no, you didn't, Mr Smythe. You didn't?---And then, when the two-man truck came in, the allowance was paid to stay out on the road, and not return to the depot, to stay on the road, to have your lunch out on the road.

PN293

Mr Smythe, you're not telling the commission - - -?---Yes.

PN294

- - - that before 2016, there weren't times when you had your lunch out on the road. Hey?---Pardon?

PN295

You didn't go back to the depot for all of your lunch breaks in 2015, for example, did you?---Not when the two-man trucks came in, no.

PN296

No.

PN297

THE COMMISSIONER: Mr Williams, is your question about the balance of the meal break? Is that what your question is? So, for example, Mr Smythe - - -?---Well, it's highly confusing, I - - -

PN298

Well - okay. Mr Smythe, so let's say you have a 30-minute unpaid break - - -?---Yes.

PN299

- - - but under the 2015 agreement, you were paid 15 minutes for sitting in the vehicle?---In the vehicle, yes.

PN300

But the remainder of the break, the other 15 minutes, is unpaid; correct?---That is - - -

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN301

Where you are - - -?--- - - - correct, yes.

PN302

- - - walking around in the public?---If you were going to the toilet, yes, or you'd be finishing that break in your truck, that is correct.

PN303

Yes, but for at least half of the break you are outside doing all the things that you say makes you fearful?---Makes it fearful?

PN304

You're vigilant?---Yes.

PN305

Yes?---So we are out of the truck in order to like buy our lunch or our food or go to the toilet break, or whatsoever, then we return back to the truck. We feel it's the safest place to be during your break.

PN306

Right. But for at least 15 minutes of it you might have been outside in the public?---That is correct, yes.

PN307

All right, thank you. Ask away, thanks, Mr Williams.

PN308

MR WILLIAMS: So, Mr Smythe, as you just said when you're in the truck you're safe?---Reasonably, yes. As safe as you can be out there, yes. One would hope so.

PN309

So when you say in paragraph 13, and you explain your concern - I'm not disrespecting your concern for one minute - but my question I want to put to you is that at least up until 2016, my client says beyond that, but at least up until 2016 you were never paid anything for the time spent out of the truck. You were only paid for time spent in the truck?---I'm not too sure what you mean by that.

PN310

Well, it's a simple fact, isn't it, and I think you might have said, gave the Commissioner the same answer, or answered the question clearly. So you should please answer mine clearly. Up until 2016 to the extent you were paid for your lunch break, 15 minutes, that was for time spent in the truck?---Yes.

PN311

And you were not paid for the time not spent in the truck?---It was 15 minutes paid at time and a half and the other 15 minutes was not paid for, that is correct.

PN312

In paragraph 13 you say:

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN313

*The payment was not for eating our lunch on the truck. It was payment for security purposes as we could not return to the safety of the depot for our lunch breaks.*

PN314

?---That is correct.

PN315

But isn't that the complete opposite of what you just told me?---No.

PN316

I thought you just told me that the payment was for eating lunch on the truck?---No. The payment's not for lunch in a truck or anything. The payment's for the security purposes of not returning to the depot. So the payment is for being out on the road for the entire shift, not returning. So when we're out there, yes, we will have a break, but the security purposes are even as we're having our break we're still vigilant and looking, because we're still in a work purpose. Even if we were hopping out to go to the toilet we generally - you have two people hop out because they're safer, we always work in tandems. You go to the toilet and you come back, you're still vigilant.

PN317

Presumably that's the case since 2000 when you first started in this industry?---Well, the industry would be a vigilant industry 24/7, yes.

PN318

But you personally. You've had to wear a firearm in public since 2000, haven't you?---That is correct, yes.

PN319

Can you ever recall, before 2016 can you ever recall the TWU making a claim to Linfox Armaguard in negotiation that they ought to pay an allowance because of the concern the crew members had of how they felt when they were out in public? Can you ever recall such a claim being made?---I don't know. I wasn't involved in the negotiations back then.

PN320

But as far as you know, at least up until 2016, which is an issue where we have to consider, but up until 2016 you're not aware that the TWU had ever made a claim for payment of the hold-up break because of the concern crew members had about how they felt when they were out in public, or how vigilant they had to be?---I wasn't part of negotiations of what they did claim or didn't claim back then.

PN321

But you were in 2016?---I was in 2016. I'm not sure if I was a delegate back then in 2016. I might have been a co-delegate just coming on.

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN322

Is it your evidence that having never paid for the time outside the truck previously Linfox Armaguard just agreed to pay?---They had - they would have had a negotiation to an EBA and came to an agreement through that which would have been signed off on and paid for.

PN323

So can we take it that you weren't closely involved in that part of the negotiations?---No.

PN324

I see. So how do you know what the purpose of the claim was from the TWU negotiator, who I think was Mr Fernandez, how do you know?---Through the - through the company and that when they explained it to the yard when we had the yard meetings.

PN325

All right. Could the witness be shown Mr Hurndell's statement, please, if it's possible, show him a hard copy. The part of it I want to refer him to, Commissioner, is annexure SH2. I should ask you, Mr Smythe, firstly, are you looking at a document that looks a bit like this?---Pardon?

PN326

I just want to make sure I know what you're looking at?---No. Yes.

PN327

You may or may not have seen this document before, but the document I ask you to refer to has up the top 'Ballot held 13 May 2016'?---I'm sorry, what was that, the - - -

PN328

The heading up the top on the document I'm looking at is 'Ballot held 13/05/2016'?---Okay, I've got ballot held 28/04/2016.

PN329

THE COMMISSIONER: Just over the page, thank you.

PN330

MR WILLIAMS: One more page over.

PN331

THE COMMISSIONER: Yes, that's it.

PN332

THE WITNESS: 13/05/2016. Yes.

PN333

MR WILLIAMS: So you will recall that when the TWU negotiators were wanting to test a proposal the company proposed with the members they would conduct a ballot, an informal ballot of members?---Mm-hm.

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN334

And do you recall this as being the ballot form for a proposal - for a ballot rather which was held on 13 May 2016, and of course I realise it's a long time ago?---It does appear so. I cannot tell you 100 per cent. Yes, it was a long time ago, but it does appear so, yes.

PN335

I just wanted to make a suggestion, and a fair suggestion to you, that what the members were told in relation to this proposal was not that there was a change to the benefit, but in fact there was no change to the lunch in the truck benefit?---It does appear that way.

PN336

So if the TWU negotiator had managed to negotiate payment for time out of the truck when that had never been the case before it would have been set out in this form, wouldn't it?---I have no idea.

PN337

You can hand that back, thank you, Mr Smythe. What's your understanding as to why the lunch in truck payment was paid?---Because we no longer return to the depot to have our lunch in the safety of the depot. It saved the company a lot of time and money I suppose, therefore it made more sense. So in order for us to stay out they offered a lunch in truck, which was held to a vote and agreed upon and all parties were happy with that.

PN338

Because if you weren't in the depot then the company had formed the view that security required someone to sit in the truck during their lunch break?---Pretty much so.

PN339

If there was a security reason, which is the trigger for the payment, then that's the security reason, isn't it, the requirement to stay with the truck?---It would be, yes.

PN340

And when you're in the truck of course you're not engaging with the public, right?---We're watching, and we sometimes engage with them when they come up and knock on the window or something, but - - -

PN341

So they do it from time to time?---(Indistinct) does.

PN342

But what you're not doing is you're not going into the food courts or the public toilets or the coffee shops or whatever?---This is on our break?

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN343

For that part of your break?---For that part of the break it would depend on how you are at the time. You may need to go to the toilet, you may need another drink or something.



PN344

And that could happen any time during the day really, couldn't it?---It could do, yes.

PN345

But the security reason or purpose that relates to being in the truck?---It does. It isn't set what they've said as in you must remain in the truck. You can go and have your lunch. You can sit outside the truck if you feel.

PN346

It does say lunch in truck, doesn't it?---Well, back in the old days it was.

PN347

And in the old days is when the agreement to pay the 15 minutes was struck, wasn't it?---It was. Back in the day it was until they changed it.

PN348

Mr Smythe, you were also involved in the 2022 negotiations?---That is correct.

PN349

And that negotiation took place after Darren Jones informed the business that it was no longer a requirement to spend any part of the lunch break in the truck?---So they said, yes.

PN350

And also of course that the 15 minutes would no longer be paid?---Mm-hm.

PN351

Mr Fernandez was gone by that time, wasn't he?---I can't - actually to be honest I can't recall if Troy was - no, I think he'd gone by then.

PN352

I think Mr Wilkinson might have been your - - -?---I think he stepped in then, James, I think. Yes.

PN353

Yes, I think that's right. I think the evidence I've seen suggests that James Wilkinson was the lead negotiator?---Yes.

PN354

I just want to show you very briefly, Mr Smythe, some documents relevant to 2022 just to get your thoughts on them. Associate, the documents are probably most conveniently contained in Blake Byrne's statement. If you have a hard copy of that that would be the easiest way for me to show Mr Smythe. 562 is the digital court book reference.

PN355

THE COMMISSIONER: So, Mr Smythe, the bottom right-hand corner is the numbers that we're looking at?---Yes. 562 did you say?

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN356

Sorry, is it 562?

PN357

MR WILLIAMS: 562. So it's what looks to be a TWU log of claims and the item that I'm interested in is item 15.

PN358

THE COMMISSIONER: That's not 562 then.

PN359

MR WILLIAMS: No, I'm sorry. Annexure BB4. I will get some better information.

PN360

THE COMMISSIONER: BB4 is 565.

PN361

MR WILLIAMS: 565. Thank you. Mr Smythe, I should ask you first - when you're ready of course - I should ask you whether that document which is several pages of tables, a table with several pages and item numbers. My understanding is that that is a TWU log of claims for the 2022 negotiations. That's what I'm told, but take your time to review it if you need to, and at the moment I'm just asking you about the document itself, not any particular item?---Yes. It does look like that, yes.

PN362

How were they prepared? How did within the TWU negotiating team do the log of claims get prepared generally, or in relation to this one specifically?---You'd have to ask the TWU.

PN363

I see. So you weren't involved?---No. We put it to our yard, we have a chat to our yard, our members, and what they would like to see, what they would like to go for in negotiations and all that, and the log of claims - we have a meeting with TWU and everyone and TWU will put up the log of claims that people are after, and then we start our negotiations as a starting point.

PN364

So does that mean that you'd reviewed the draft before it went off to the company?---Pardon?

PN365

You yourself had reviewed the draft before it went off to the company?---No. I mean we'll go through it and we go through it with the company, yes. Sorry, I apologise, yes, I'd have a look at it when we sit down with the company, yes.

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN366

And there'd been some discussions with the yard. By the yard I assume you mean the members?---No, the yard would put in their part. It would be drafted up, we

would then have a negotiation with the company, and then after our negotiation we'd then report back to the yard where we are with the negotiation.

PN367

So I guess I'm assuming that if you're putting together a lot of claims to put to the company, you'd have to be comfortable that the members supported it?---Yes – yes.

PN368

Yes. And that you'd made every claim they wanted to make?---Well, probably not every claim everyone wanted to make, it'd be a bit too many claims there.

PN369

Yes, might be too. There's enough as it is. But in relation to this one, can you remember actually discussing the final table with the yard?---Not especially.

PN370

It probably happened though?---There's a lot happened since then so I couldn't be 100 per cent sure, no.

PN371

I understand. That's fine, (indistinct) understand. But you had a new – as I understand it – a new lead negotiator, Mr Wilkinson?---Mm-hm.

PN372

Do you remember when you first met him, roughly?---Not exactly.

PN373

But did – in those - - -?---I mean, after Troy had left, or been put somewhere else, Mr Wilkinson had come in and I'm not sure exactly what date that was. And we would have met with him a week or two after his appointment, I suppose.

PN374

And you would have worked with him to get this table together?---Yes.

PN375

Right. So - - -?---(Indistinct) and the TWU.

PN376

Right. And you would have made sure that he was aware of what the yard wanted?---Yes.

PN377

So this table might be a combination of a national – claims that would be made on a national basis, plus some that came from the yard?---No – no.

PN378

It's not? There's nothing from national here?---I'm not sure if there's anything from national there. I'm not that deep into what the national parts are. It's a statewide agreement.

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN379

All right, okay?---Yes.

PN380

So this is - - -?---It's not a national agreement.

PN381

Right. Okay, now, who was helping you – who else was helping in the team? Was Mr Humphreys helping?---Mr Humphreys would have been. All the TWU reps from the different departments and delegates from the different depots. Depots that had delegates in them.

PN382

Yes. Mr Hurndell, can you recall?---Yes, Mr Hurndell would have been involved.

PN383

So you, Mr Hurndell and Mr Humphreys were all helping Mr Wilkinson in the negotiation?---Yes.

PN384

Yes, right, okay. So see claim 15, sorry, before I take you there. I think I may have already checked off this with you, but just to repeat: This was a negotiation which was happening fairly shortly after the company had taken away the benefit?---Pardon?

PN385

Sorry, I didn't put that well, did I. This negotiation happened shortly after – through Darren Jones – Linfox Armaguard had said that there was no longer a requirement for crew to spend lunch in truck, and therefore the 15 minutes wouldn't be paid?---To my knowledge, no.

PN386

Well, can I just suggest that the Darren Jones discussion was in the – August 20 – around mid-2021?---August – yes, I do believe so.

PN387

I think you refer to it, actually, in your statement?---Yes, no, that is correct, yes.

PN388

Yes. So I'll just make sure I remind myself what you said about it.

PN389

THE COMMISSIONER: I think it was July 2021, isn't it?

PN390

MR WILLIAMS: Yes, it took a little while, but I think it started in July.

PN391

THE COMMISSIONER: And then this is 4 April 2022, Mr Smythe.

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN392

MR WILLIAMS: Yes. So would you agree with that (indistinct) clarification, that somewhere in mid-2021, Linfox Armaguard had said they were no longer going to provide the benefit. And then in 2022 you're negotiating for a replacement agreement?---I think we had a go, (indistinct) them saying that they should be reinstating that. That it should have been – if they wanted to take it out, it should have been negotiated out through the EBA and not just take something away that they've agreed to and signed off on.

PN393

Yes. But if you look at the wording, do you know who drafted that?---Not exactly, no.

PN394

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

PN395

You're not - - -?---I'm not sure.

PN396

But you'd agree with me that it seems to be clearly a claim which is clearly linked to meal breaks required to be taken inside vehicles?---It is a claim, yes.

PN397

Now, it's not a claim for any part of the lunch break to be paid because of a concern that crew members have about going out in public wearing a firearm. Do you agree with that?---Say that again, sorry.

PN398

Well, it doesn't appear to be a claim for reinstatement of a payment or just payment of part of the lunch break during which crew members were out in public wearing their firearm. It seemed to be limited to the requirement to take lunch inside the truck. But I'm happy for you to take the time and think about that?---No.

PN399

Well, I'm just reading the words, Mr Smythe. 'The reinstatement of paid meal breaks' - - -?---I do, yes, I can read the words of what it says.

PN400

Well, there's a bigger argument which we're definitely having, Mr Smythe. But if we just limit it to what the TWU log of claims said in 2022, it says that. 'The reinstatement of paid meal breaks required to be taken inside vehicles'?---Yes.

PN401

It's not a claim for part of the lunch break to be paid when the crew members are not inside the vehicle and interacting with the public?---No, well, not from what the claims are asking or stating.

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN402

I'm just struggling with that part of your evidence where you say that in 2016 the TWU negotiated a payment for when the crew members were out in public. I'm struggling with that. Is that really your evidence, that that's what you think came out of 2016?---No.

PN403

Well what did come out of 2016 then?---The 2016, the reason why we got paid the time and a half in it was purely because we weren't back at the depot within a relaxed environment, where we're not constantly vigilant, where we are away from the public, trucks parked off, we can sit back. When we're out on the road and we're out there, it was paid because we're not going back to the depot, we're staying out there. We're not exactly – we're generally 24/7, we're not completely relaxed in a truck, dazed out or spaced out, is paid because we're – you never relax fully. You're always in the truck, you're on guard. So even as you're hopping out, which we do, it was paid because you're not – the basic reason why it was paid because we're not going back to the depot. It was payment for being out on the road 24/7, so you were paid that. It wasn't paid to – as they were trying to state it, to get it back, no.

PN404

At least up until 2016, I'm pretty sure you've already agreed with me, that it was paid for the time in the truck only?---It was called a 'lunch in truck'. It was paid to stay out on the road, have your lunch out on the road in the truck, at the truck. But you were not coming back to the depot. So that was called 'lunch in truck'. You're out 24/7.

PN405

But, as I understand what you said to the Commissioner, it is that from 2016 there'd been a change to that?---In 2016 Darren Jones, I remember when we had the hook-up and that - - -

PN406

Well, just pause you, so we don't get confused?---Sorry.

PN407

It's 2016 I'm talking about?---2016, sorry, yes.

PN408

The 2016 negotiation?---Which I wasn't a part of, but, yes.

PN409

You weren't a part of it?---No, I wasn't a part of that team, which I'd said. Previously in 2016 with negotiations.

PN410

So I'm just wondering why you think Linfox Armaguard had agreed to pay part of the lunch break irrespective of whether it was taken in the truck. Why do you think that?---Because it was what they paid us to stay out on the road, instead of coming back to the depot which would save them a lot of time and money.

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN411

Well, so are you saying that nothing changed in 2016 then?---It was – hey?

PN412

Nothing changed in 2016?---Well, we were – I don't know. I was still getting paid the 'lunch in truck' in 2016. As I said, I wasn't part of negotiations, I was just road crew back there. I just got information back to us in 2016, from our delegates and whoever was doing (indistinct).

PN413

Well, who told you what you've written in paragraph 12 of your statement?---Yes, that's agreed.

PN414

Who told you that?---It would have been our delegates and it would have been confirmed by management and any questions that we had. So they would have come back from our delegates, as you see in this, what's been, so, agreed to or not agreed to.

PN415

Well, but you say, 'would have been', but you can't really recall, can you? You now can't recall?---Not 100 per cent, no I cannot recall 100 per cent.

PN416

But if someone had come to you and said, 'Good news, we've managed to negotiate a clause which means you get paid for half of your lunch break, whether you have to stay in the truck or not', you'd remember that, would you?---Well, I'd have to remember it, as a document come out, signed on, which it was in the EBA. It was all fully signed off on by both parties with no further changes, and it was there, yes.

PN417

Right. But just to be very clear about this, your belief, as to what came out of the 2016 negotiation was, no change to the 'lunch in truck' benefit. That's really the fact, isn't it? No change?---It was, no changes made, no.

PN418

No. And if we just go back, and I'm sorry, Mr Smythe, to take you to different places. And I'm nearly done. But just to take you back to that log of claims. And I'm not sure we quite got to the bottom of it. At the point when you were negotiating the 2022 agreement, Linfox was paying for none of the lunch break, is that right?---No, they had stopped it.

PN419

They'd stopped paying for the lunch break. They'd stopped paying for any time – any amount of time in the lunch break that the crew members were out in public?---That is correct.

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN420

Yes?---They just stopped paying for the lunch break in total, yes?---And they'd said that there was no requirement that that crew member stay in the truck, right?---Yes.

PN421

Yes. To your knowledge, was it still the case that some crew members would take lunch in the truck? Is that what happened or maybe you don't know?---Would they still have their lunch in the truck?

PN422

Yes, was it still the case that some crew members would occasionally still stay in the truck for part of their lunch break?---Yes – yes.

PN423

Why would they do that?---Personal preference, I suppose. A safer place for them whilst having lunch.

PN424

Old patterns, maybe?---I still have my lunch in truck now. I sit in my truck to eat my lunch and that. It's the safest place for me.

PN425

Yes. But see, the Commissioner would have to read this claim here in paragraph 15, as being a claim for that for payment of the lunch break when the crew members were inside the vehicle, but not a claim for any amount of the lunch break that they were not inside the vehicle?---It was paid inclusive, whether they were inside or outside the vehicle.

PN426

Well, it doesn't say that does it?---Are you reading from this one?

PN427

Yes, we haven't moved off it?---Yes.

PN428

'The reinstatement of paid meal breaks required to be taken inside vehicles'?---Sorry, I'm looking at the wrong one. Yes.

PN429

Yes. So, there's no claim for payment for any time spent outside the vehicle?---By that, no, there wouldn't be.

PN430

No. And if you had believed, Mr Smythe, if you had truly believed that the 2016 enterprise agreement – or I think it may have been the 2019 enterprise agreement with the same wording – if the current position in 2022 was that the crew members were entitled to be paid for any part of their lunch break, or in fact, for all of their lunch break, that claim wouldn't have had to be made, would it?---Sorry?

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS



PN431

Well, sorry, it's a complicated question, I'm sorry, Mr Smythe. But just to take it one step at a time. Is it your understanding that the TWU's position in these proceedings is that the lunch break has to be paid for 15 minutes, irrespective of whether the drivers are in the truck or not?---That would be correct.

PN432

So, if that was the case, then you didn't need to make a claim about it, because you'd already got it?---That is correct.

PN433

So what were you doing in 2022 making a claim for reinstatement of a paid meal break?---Probably - - -

PN434

Why did you need to do that?---Well, it is in our agreement – our current agreement again. It's all been copied over.

PN435

Yes. But there was no change to the wording of the agreement in 2022, was there? You just rolled it over for a year?---I don't believe so.

PN436

Yes. So you agree with me that there was no change?---I couldn't tell you exactly. I haven't got it in front of me.

PN437

Okay, well my understanding about that is that after some – there was a bit of industrial action and then an agreement that you basically rolled it over with a pay rise but no change to any substantive clauses?---No change to the EBA, no, yes. Just a pay rise.

PN438

So that's also your recollection then?---I do believe so, it's a long time.

PN439

Yes, okay, all right. So you must have believed, in 2022, that the paid meal break was no longer an entitlement?---Personally? No, I do believe it's an entitlement. It's not a paid – it's a – for security reasons, being out there, I do believe that we're entitled to that.

PN440

Did you tell Mr Wilkinson that?---Yes.

PN441

You did? What, you told him, 'Well, hang on, hang about, we don't need to make that claim. It's already an entitlement.' Did you tell him something like that?---It has been a claim. It has always been a claim. It has always been in there until Darren Jones stopped paying it and I think through negotiations we tried to get them back on track to go, 'Hey, what's going on here?'

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN442

Have you yourself had involvement in how you make claims for unpaid wages?---Pardon?

PN443

Have you had any experience yourself with how a union helps members make a claim for unpaid wages?---No.

PN444

That's not an experience you have had?---No, no.

PN445

Right?---I haven't had a personal wage dispute or unpaid claims, anything like that, before.

PN446

But on the evidence you're giving to the Commission you must have thought that Linfox Armaguard was wrongly paying the crew members?---No.

PN447

You don't think so?---They were paying them correctly and then they pulled it, which was incorrect I do believe.

PN448

But your view must be that since 2021 when Linfox Armaguard stopping paying it – your view must be that they were in breach of the agreement?---Yes.

PN449

Well, why didn't you do something about that?---We did.

PN450

What?---We put up an argument and everything, and it went into the TWU's hands.

PN451

Mr Smythe, the TWU is not going to fail to pursue another claim if it believes that the enterprise agreement has been breached, is it?---Pardon?

PN452

You're not an office holder in a union that would just stand by and allow an employer to breach an enterprise agreement, are you?---No.

PN453

So respectfully, Mr Smythe, you never had any belief that the luncheon truck allowance under any agreement, including 2016, 2019 and 2022, was payable except in the specific circumstances where the crew members weren't having their lunch in the truck?---(No audible reply)

PN454

That's your true belief, isn't it?---(No audible reply)

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN455

Whatever you might think about it, whatever other aspirations you might have or however annoyed the members are about it, if they don't eat lunch in the truck they don't get the allowance?---No.

PN456

That's your belief, isn't it?---No.

PN457

Well, it appears to be the union's belief if one takes item 15 seriously. You agree with that or disagree?---I don't believe so.

PN458

Okay. Can you track over a few pages. There are a couple more documents to show you and you may or may not be able to help me with them. BB9, Commissioner, and the court book reference is 605?---Sorry, what page?

PN459

It's page 605. I think you might find a paginated number. Page 605 should be a document which says, 'This is attachment BB9 to the witness statement of Blake Byrne'?---This is the attachment of BB9?

PN460

Yes?---Yes.

PN461

You see that?---Yes.

PN462

So if we track over three pages from there – I'm sorry, Mr Smythe, I just want to check something with you on the first page. The document appears to be notes of a meeting entitled 'Meeting 4'?---Meeting 4?

PN463

Yes, that goes back a page from where I put you. Maybe delete that one page?---Yes, I have Meeting 4 there, yes.

PN464

Yes, I think you're right on it now. If you look up the top it says, 'Meeting 4'?---Yes.

PN465

You see that. There are some participants mentioned and I'm assuming that 'Nathan' is you?---Yes.

PN466

So you were at this meeting?---Yes.

PN467

Then if we go over the page to the very last thing on that record, you see it says:

\*\*\* NATHAN SMYTHE

XXN MR WILLIAMS

PN468

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

PN469

You see that?---Is this on the other page, sorry?

PN470

The meeting record appears in three pages, 608 is the last page. It has only got a couple of lines on it?---Sorry. Yes, I see it.

PN471

It says:

PN472

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

PN473

We can go back and have a look at the log if you like, but claim 15 is the lunch in truck claim that we looked at before?---Right.

PN474

I should ask you whether you remember that. Do you remember being at a meeting where you and the other TWU negotiators told the company that you wouldn't press the claim for lunch in truck reinstatement?---That I what, sorry?

PN475

That you wouldn't press a claim for lunch in truck reinstatement?---Not at that point in time.

PN476

But you also remember linking that to the company – an offer from the company in relation to wages?---Not a hundred per cent.

PN477

You can't remember that?---A lot has happened since then.

PN478

A lot has happened?---My apologies, but - - -

PN479

Some other witnesses are going to come along and explain, Mr Smythe. I appreciate your recollection is not perfect. I don't have any further questions of you.

**RE-EXAMINATION BY MS DALTON-BRIDGES**

**[11.50 AM]**

\*\*\* NATHAN SMYTHE

RXN MS DALTON-BRIDGES

PN480

MS DALTON-BRIDGES: Mr Smythe, Mr Williams said that back in September of 2016, which is when the enterprise agreement was certified, there was no change to the payment. Can you explain what you think happened with the

enterprise agreement in 2016 around the meal break allowance?---I'm not a hundred per cent sure. I wasn't a part of that, but all I can say as a road crew member there was no change. We still got paid everything, yes.

PN481

So when we talk about no change, do we think that road crew felt they were paid the same?---Yes.

PN482

As they had always been paid?---That is correct. No change.

PN483

Yes, okay. In terms of understanding what the payment was for, do you think there had been a lot of discussion around that at the voting for the enterprise agreement?---For what exactly, sorry?

PN484

When there has been this change in the enterprise agreement 2016 - - -?---Yes.

PN485

- - - do you think there was a lot of discussion around the payment was for something different or do you think it was just because the payment was remaining the same there wasn't a lot of discussion? It was just carrying on, that's why people refer to the status quo - - -?---To my belief it was just carrying on, status quo, no change. I didn't know if there was much agreement in 2016 or not.

PN486

So you would say even though things did change in the agreement, for people on the road it felt the same perhaps?---That would be correct.

PN487

All right. Thank you, Mr Smythe.

PN488

THE COMMISSIONER: Mr Smythe, do you accept that sometimes an employer can pay more than they're obliged to in an enterprise agreement?---I'm not sure at all. I know they do make mistakes or - - -

PN489

Well, that's what Mr Jones said to the TWU in 2021, isn't it?---Apparently so, yes, he did.

PN490

His position was that under the 2019 agreement Linfox had been overpaying people?---So he reckons, yes.

PN491

You were a delegate by then?---Yes, I was.

\*\*\* NATHAN SMYTHE

RXN MS DALTON-BRIDGES

PN492

Did you think about instructing the TWU to raise a dispute in the Commission about that at the time?---I think – I can't exactly remember what we said, but we did state to him that we thought what he said was wrong and that if it did, well, then, yes, it would have to come before the Commission if there was no agreement reached or something.

PN493

So if you think Linfox was wrong in 2021, why would you as part of the TWU delegates negotiating for the 2022 agreement allow them to retain the same words in the 2022 agreement where they weren't paying it to you?---I don't know. The company, Armaguard Linfox, had agreed to no changes and to put it forward, just roll it over, which they had and they still kept it in that, to which I thought - - -

PN494

So you thought they were wrong?---Well, I thought we were right and Linfox, yes, was still wrong; hence why it was still in there. They have left it in there still.

PN495

Did you think more fool them?---I don't think more fool anyone. I don't think that at all. I'm not sure how I feel with them. I think it's something that they should have been paying and, if not, should have been negotiated out but hadn't been. It was just taken away, 'You can't have it any more', so – and I thought it would be something for the Commission if it could not be worked out, but then to have the EBA followed on with no further changes and they did - and it was still in there, paid meal break, to me it was just – that's correct, there's no changes. We should still be paid that break for the security reasons of patrol.

PN496

What happened after this Meeting 4 where the union says they will withdraw claim 5 pending an offer from the company? What happened next, do you think?---We never really got an offer from the company.

PN497

Well, the agreement went out to vote?---Pardon?

PN498

The agreement went out to vote?---Yes, it did, yes.

PN499

And it was for - - -?---It was voted on and the vote got up.

PN500

Yes, but the claim was for reinstatement. Why would you need to reinstate something if you already had an entitlement?---I'm not sure exactly on that one.

PN501

All right?---I think they would have been pushing to reinstate what you've taken off us. That shouldn't have been taken off the way it was, would be my guess at it.

\*\*\* NATHAN SMYTHE

RXN MS DALTON-BRIDGES

PN502

Anything arising out of that, Mr Williams?

PN503

MR WILLIAMS: Not from me, Commissioner, no.

PN504

THE COMMISSIONER: Ms Dalton-Bridges?

PN505

MS DALTON-BRIDGES: No, Commissioner.

PN506

THE COMMISSIONER: Thanks, Mr Smythe. You're excused from giving evidence. Thank you for your attendance?---Thank you.

**<THE WITNESS WITHDREW**

**[11.56 AM]**

PN507

THE COMMISSIONER: Parties, shall we have a convenience break?

PN508

MR WILLIAMS: We should do, thank you.

PN509

THE COMMISSIONER: Yes. How about we resume at 10 past 12?

PN510

MR WILLIAMS: Thank you.

PN511

THE COMMISSIONER: Thank you. We will adjourn.

**SHORT ADJOURNMENT**

**[11.56 AM]**

**RESUMED**

**[12.16 PM]**

PN512

THE COMMISSIONER: Right, thank you. Ms Dalton-Bridges?

PN513

MR DALTON-BRIDGES: Commissioner, we'll bring in Russell Humphreys.

PN514

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

PN515

MR HUMPHREYS: Russell Michael Humphreys, (address supplied).

**<RUSSELL MICHAEL HUMPHREYS, AFFIRMED**

**[12.17 PM]**

\*\*\* NATHAN SMYTHE

RXN MS DALTON-BRIDGES

**EXAMINATION-IN-CHIEF BY MS DALTON-BRIDGES**

**[12.17 PM]**

PN516

MR DALTON-BRIDGES: Mr Humphreys, do you have your statement with you?---Yes, I do.

PN517

Have you prepared your statement yourself?---Yes.

PN518

Can you tell me how many paragraphs your statement is?---Twenty-two.

PN519

And are those 22 paragraphs true and correct?---Yes. To my best knowledge, yes they are.

PN520

And have there been any alterations or changes required?---No.

PN521

Right, thank you, Mr Humphreys.

PN522

THE COMMISSIONER: Thanks, Mr Humphreys. You'll be asked questions in cross-examination now.

**CROSS-EXAMINATION BY MR WILLIAMS**

**[12.18 PM]**

PN523

MR WILLIAMS: Mr Humphreys, I am Dan Williams advocate for Linfox Armaguard?---Mm-hm.

PN524

I just have a few questions for you. I have noticed in your statement that you have been a cash and transit operator since 2000?---That's right.

PN525

So you have seen all the different changes since then?---Yes.

PN526

One of which being that, I think, in about 2000 the crews stopped doing – going back to the depot for lunch?---Yes.

PN527

And there was a negotiation and the employer decided to pay the lunch in truck allowance?---Back in 2000 I was first employed to fix the ATMs when they broke down. I was first line response. So I actually was not on the truck.

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN528



I see?---I was there from about halfway through 2004, I went across to the trucks. And the lunch in truck was being paid at that time as lunch in truck was being paid at that time as lunch in truck.

PN529

Right?---They would have – they used to go out in the morning then they would have to come back, have their lunch and go back out in the afternoon.

PN530

And then that stopped and there was an arrangement whereby they would get paid some of their lunch break as a lunch in truck allowance?---Yes.

PN531

Because of what was it a protocol that they should stay in the truck for part of the lunch break?---Yes.

PN532

Yes. And you were involved in the 2016 negotiation?---Yes. I was on the committee for that time, yes.

PN533

Yes. I'll just read to you what the clause said before 2016?---Mm-hm.

PN534

It's different now?---Yes.

PN535

But in the previous agreement – the 2015 agreement – it said this, '32.2.1 – 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.'?---Yes.

PN536

Right. So, consistent with what you just told me up until – at least up until 2016 the 15 minutes or the time – the paid time was the time spent in the truck?---Yes.

PN537

Yes?---Back then the lunch break was longer than what it was – is now.

PN538

That's quite correct?---Yes.

PN539

It's come back a bit for some reason. And you also agree that there was a reference in the clause to security reasons?---No. I don't. I don't recall that one. That was change in 2016 when - - -

PN540

Well, I am talking about 2015?---No. No, I don't believe it was. I don't remember that part. Sorry.

PN541

Okay. You may not and I'm sorry. I'll read it again. '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.' So I appreciate you didn't draft that clause and didn't have that immediately familiar in your mind but would you agree with me that in that clause, 2015, the security reason was referable to a crew member staying inside the truck?---I'd have to say, 'yes'.

PN542

Yes. And the security reason would be the security of the truck and its consignment?---Yes.

PN543

Yes. Okay. And so when you say – when you give evidence in paragraph five, 'At the time we were paid for having our lunch in the truck as previously we had to return to the depot to have our lunch break.' You'd agree that that payment was for having lunch in the truck? That is for the 15 minutes or whatever it was that the crew member spent inside the truck?---Yes.

PN544

And that that was a response to a security concern in relation to the security of the truck that was assigned - - -?---No. It was in response to – because we used to go out in the morning and then come back. And then to save money they said to them, 'If you stay out we will pay you 15 minutes at that rate.' It wasn't for security reasons. It was because they didn't want us to go back to the depot.

PN545

Well, I will read the clause again. '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.' So that's pretty clear, isn't it, that the paid time was the time inside the vehicle? And that the security reason was related to the need to spend time in the vehicle?---I don't rely on that. No. No, like I said to you when I first went – come over – that was how it – that was how it was. It was to stop us from coming back for lunch.

PN546

Yes. But I appreciate that you didn't draft the clause but that pretty clearly seems to be the intention of whoever did draft the clause?---I don't know. You'd have to ask them.

PN547

Right?---I don't – my understanding is like I said.

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN548

Okay. So that understanding that you've just mentioned that's repeated in paragraph – or set out in paragraph 11 of your statement if you go to it? You say, 'I understood this payment.' And this is – sorry, I'm going to withdraw that and go

up to page – read paragraph 10 as well. The 15 minute paid meal allowances for security purposes. So just take your time but that's a reference to the way it was paid after the 2016 negotiation?---Well, it says it was paid for security purposes from the 2016 to 2021.

PN549

Yes. So when you say the 15-minute paid meal allowances for security purposes in paragraph 10 you're talking about the regime of 2016 onwards?---Yes.

PN550

Right. But you agree that there had to a security purpose?---The reason it come up it was because when we started negotiating in 2016 Armaguard Management back then wanted us – wanted to get rid of the lunch in truck clause altogether.

PN551

In 2016?---In that – in that negotiations.

PN552

That's right?---And we said, 'Well, we carry our firearm the whole day. We cannot take it off until we come back to the depot.'

PN553

Right?---So we said, 'We can't sit down and have lunch because we can't – we always have to be on alert because we have our firearm on.'

PN554

Yes. Right?---So then John O'Brien agreed to that clause is for security reasons that we'll be paid for that.

PN555

Right?---Yes. That's what it was.

PN556

Right. How do you know that?---What?

PN557

How do you know that?---How do I – sorry, I don't – how do I know what?

PN558

How do you know that John O'Brien agreed that it would be paid for security purposes?---Because when Troy Fernandez was there I was with – we were on that same committee.

PN559

Yes?---And when it come back – when he was the one that they wanted to get rid of it and when we went backwards and forwards it was the paragraph that they agreed to was with John O'Brien was for security purposes.

PN560

Correct?---We will be paid.

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN561

That's right. And the security purposes, historically, had been for the need to spend some of your crew member's time in the truck?---No. But back then it was because they didn't want us coming back for lunch.

PN562

Was that 2004 now?---Well, it was basically from 2004 to 2015 was basically the same.

PN563

Yes?---But in 2016 it changed to the security because we couldn't take our firearm off.

PN564

I understand you have got a strong view about that Mr Humphreys but you're not going back on your answer you gave – I believe you gave me earlier that at least under the – up to 2016 – under the 2015 wording the security purpose was about the requirement to – some or part of your – spend some part of your meal break on the truck?---That's not my belief, no

PN565

Are you changing - - -?---I wasn't. I was on the committee on 2016. I wasn't on it before that.

PN566

Right. So you've got no idea what the original purpose of the lunch in truck payment was?---My understanding of the purpose was that because they didn't want us to come back for lunch.

PN567

And the security purpose was related to the requirement for a crew member to spend some time in the truck?---Not that I recall, no.

PN568

So that's not your belief?---No.

PN569

Right. So despite the wording of the clause you've never understood that the security purpose, at any time, was about the need to spend a crew member's time in the truck?---No. Not till 2016 one. That's changed.

PN570

Well, sorry, what do you mean by that?---Well, it was up until we come back for lunch.

PN571

Yes?---It was – that was how the wording was until we had negotiated. When they wanted to get rid of it we negotiated - - -

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN572

Yes?---- - -with John O'Brien that that was the wording – new wording for 2016.

PN573

So it still had security purpose then or security reasons?---I'll give you that. Yes, it does.

PN574

Yes. So are you saying that Linfox Armaguard, suddenly completely changed its mind about what the relevant security reason was?---Well, from when – well, yes, I could say that because from when I started in 2000 a lot of the security stuff I had back then didn't happen now.

PN575

Right?---So, yes. They did over time.

PN576

Should it under the current regime if a driver decides to spend time in the truck shouldn't they get the allowance?---Most of the people spend their time in the truck anyway because they feel safe there.

PN577

Well, if they spent the whole 30 minutes in the truck should they get the allowance?---Well, yes, because they can't – don't feel safe going to a shopping centre. Well, we can't walk into a pub and have a counter lunch. We can't – we can't take our firearm off and we don't feel – a lot of people don't feel safe.

PN578

What's the security reason related to going in and out in public if the driver decides to spend the whole time in the truck?---I don't understand what you mean.

PN579

Well, the driver decides now whether they're required to or not to spend time in the truck. What's the security reason that says they should get the allowance?---Because of our firearm. Because we have to – we can't take it off. We have to spend time with that – with the whole firearm. So the reason is that because we have to be on constant alert.

PN580

Well, you don't if you're in the truck?---Well, yes – no, not in the truck you don't.

PN581

So what is the security reason which justifies this payment, Mr Humphreys? Is it being in the truck or is not being in the truck? What is it?---I – I would say it's the same as what I said. I can't put it any other way. It's because of our firearm. We can't take it off and we can't – everybody – you can't relax, just sitting there in the shopping centre surrounded by people. So that's the reason why that was – that wording came up in 2016.

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN582

Right. Before 2016 you'd spent time in shopping malls and coffee shops and public amenities, hadn't you? During your shift?---No.

PN583

During your lunch break?---No.

PN584

I see. So your personal experience is that you always spent the whole of your lunch break in the truck? Every day?---Yes.

PN585

Right. But you're aware that there was no requirement for you to spend the whole of your lunch break in the truck?---No. I wasn't.

PN586

You're not aware of that either?---No. I wasn't back then. No.

PN587

Were you a part of a two-person crew?---I was when I come over. Yes.

PN588

Did you never leave the truck to go to a public amenity?---I went to the toilet and that, yes.

PN589

Did you never leave the truck to buy a can of Coke or a sandwich?---I bought it and come – brought it back to the truck.

PN590

All right. But you could have – if you wanted to – you could have sat on a park bench or in a café if you'd wanted to?---Yes. But it's just – I don't feel safe doing it.

PN591

Right. So that's the personal view you have?---Well, no. Not really. It's common sense really.

PN592

Well, is it a personal view that you have?---Well, it's a personal view. You could say it's a personal view but that's the view of most road crew.

PN593

Right. But you were well aware, weren't you, that before 2016 the payment was for spending time in the truck?---Yes.

PN594

You do agree with that?---I would say so. Yes.

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN595

Yes. And that was the security reason which justified that payment?---Well, like I said before, I don't know. Not for security reason. I don't recall that part, no.

PN596

Okay. Well, we have been (indistinct). Now you were part of the negotiating team for 2016 and I think also for the subsequent negotiations?---Yes.

PN597

For 2019 and 2022?---Yes.

PN598

Yes. So is it your belief which I think this is a fair summary of your evidence, your belief that in 2016 there was a very significant change to the qualification for the benefit?---Yes.

PN599

It went from being a payment for being in the truck to essentially a payment for being outside the truck. Is that really what you think?---I don't understand what you mean, a payment for being outside the truck.

PN600

Well, a payment for the awkwardness, if I can put it that way, of having to be in the public wearing a firearm and then what you've said is the fact that you can't relax, and you have to be vigilant?---Well, you do.

PN601

I'm not suggesting you don't, but is it your evidence that in 2016 there was a complete change in the identification of the security reason for payment of the allowance?---Well, my belief back then was like I said, they wanted to get rid of the entire lunch in truck and we come back with the proposal, well, we can't really do that because we still have to be on a constant state of alert, because we have our firearm and that's when that payment for security reasons – and was agreed to by Armaguard and John O'Brien.

PN602

So you think John O'Brien just said, 'Oh, that's a good opener, I'll accept that.' Is that what happened?---I don't know. You would have to ask John O'Brien.

PN603

Is that how you think companies like Linfox Armaguard negotiate enterprise agreements?---Then how else would they have agreed to it?

PN604

Well, Mr Humphreys, I'll tell you that the company has a different view to you about what the clause means and a very different understanding of the history, but that's fine, that's not uncommon. I'm after your perspective?---Mm-hm.

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN605

Did you think that Linfox Armaguard had come at you saying, 'We want to stop paying for it, for lunch in truck', and you said, 'Well, in fact it's justified because

of the time we don't spend in the truck, so you should keep paying it', and they said, 'Oh, okay, that's fair.' Is that kind of what happened?---I don't understand what part of being – about not being in the truck.

PN606

Well, let's take it one step at a time and I appreciate maybe you have a different perspective than some others on why it has ever been paid?---Mm-hm.

PN607

But if you accept for the moment that Linfox Armaguard was paying the 15 minutes because drivers were spending time in the truck?---Mm-hm.

PN608

That's what they believed and that's what the clause said. Do you accept that?---Yes.

PN609

They came to you in the 2016 negotiation and said, 'We want to stop paying it. We want the whole of the lunch break to be unpaid irrespective of whether you spend time in the truck'?---Yes, they did, yes.

PN610

That's right. What you're saying that you said to them, 'Well, in fact you should pay us 15 minutes even when we're outside the truck for different reasons'?---No.

PN611

Is that what you're telling me was the TWU's negotiating position?---The TWU back then, like I said, was that they wanted to get rid of that and so the wording was, 'Because of our firearm and because of what we had on' – that it was agreed to that the wording would be for security reasons that we would be paid 15 minutes to have – for that, because – just because of those security reasons.

PN612

So Linfox just – they came at you trying to get rid of the whole thing and you're saying that in a negotiation they put their hand up and said, 'Oh, okay, we'll pay it irrespective of - we will pay it in all circumstances'?---Well, they did.

PN613

That's what you think they did?---Yes.

PN614

Right?---They did.

PN615

And you think that the security reason which justified it changed in that negotiation a requirement to be in the truck to being related to the time when you were outside the truck. That's what you think?---I still don't understand the 'being in the truck' and 'being out the truck'. What has that to do with the payment?

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN616



Mr Humphreys, you're the witness - - -?---I don't understand what he's trying to - -  
-

PN617

Can I go back to paragraph 11 of your statement - - -

PN618

THE COMMISSIONER: Wait until the question is asked. Thank you.

PN619

MR WILLIAMS: Go to paragraph 11:

PN620

*I understood this payment had nothing to do with lunch on truck payment. It was payment for not returning to the depot for our breaks and being in public spaces where we had to go to bathrooms and access food providers during our meal break.*

PN621

?---Mm-hm.

PN622

So that's what you say is a security reason which justifies the payment now?---Yes, because we would go to the toilet, we would buy our food and we would go back to the truck.

PN623

But it related to the time outside the truck, not the time inside the truck?---What, you mean going to the toilet and then buying lunch and going back to the truck?

PN624

Well, you just said that the payment had nothing to do with lunch in truck. It was for -

PN625

*being in public spaces where we had to go to bathrooms and access food providers during our meal break.*

PN626

?---Yes.

PN627

Despite the fact that Linfox had never ever previously recognised that circumstance as justifying an additional payment, had it?---No.

PN628

But Mr O'Brien just thought it was a good argument and accepted it on behalf of his - - -?---Well, it took negotiations. It wasn't just we did it at the - we were backwards and forwards, like negotiations do and that's what - and we settled on - that's what was settled on and John O'Brien and Armaguard agreed to it?---No.

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN629

They agreed to the clause, Mr Humphreys. What it means is another thing. If what you say is true - if it's true - that reflected a pretty fundamental change in the nature of the benefit, didn't it?---I don't understand how. It was still the same payment.

PN630

Yes, but it's payable no matter whether they're required to be in the truck or not?---Yes.

PN631

What would be the rule if somebody had happened to be in the depot during their lunch break? Would they get it?---I don't know. No one ever went back to the depot to have it.

PN632

What would be the security reason if they did?---I don't know. No one ever went back to – everybody stayed out. No one came back for lunch.

PN633

Were you involved in the process of engaging support for proposals amongst the yard, amongst the members, during the 2016 negotiations?---No, that was, I think, Steve Matthews and – I was on the – Steve Matthews, that was the – I'm pretty sure he was the delegate, I think.

PN634

Okay?---I'm sure.

PN635

What about Mr Hurndell; did he have a role in it?---No, Steve wasn't there. I don't think Steve was there then.

PN636

Okay. Do you know what the members were told about the status of that particular clause; the lunch on truck payment?---No, I couldn't tell you. I don't know.

PN637

Would it be surprising to you if you knew that they were told that there was no change?---No change to the wording or - - -

PN638

No change to the lunch on truck benefit?---Yes, it would surprise me, yes.

PN639

It would surprise you?---Mm-hm.

PN640

Well, just so the witness is not treated unfairly, could the witness be shown Mr Hurndell's statement, please, and specifically annexure SH2. It's page 61.

PN641

THE COMMISSIONER: Are you at page 62?

PN642

MR WILLIAMS: Yes, sorry, 62 is the ballot paper. I beg your pardon.

PN643

Some evidence has been given – I don't think it's controversial – that this was a ballot paper which was given to the members when considering a proposal which had been made by the company in May 2016?---Mm-hm.

PN644

Now, I'm really only showing you this, Mr Humphreys, for fairness because I appreciate you told me that you weren't really involved, but you see that it does in fact say, 'Lunch on truck, no change'?---Yes, it does.

PN645

Now, if the result of the negotiation had been as you have suggested, that wouldn't be correct, would it?---(No audible reply)

PN646

There would be a fundamental change?---Yes, I would say, yes.

PN647

And one strongly in favour of the employees?---I don't understand. What do you mean, in favour of the - - -

PN648

Well, on your understanding not only had you fended off the company's claim to stop paying any part of the lunch break, you had negotiated an arrangement whereby they would get paid whether or not they spent any time in the truck?---(No audible reply)

PN649

So that would be an improvement, wouldn't it?---I would say so.

PN650

If that was the case, the members would have been told, wouldn't they?---Look, I can't – like I said, back then I don't know. I wasn't – I can't remember that.

PN651

Okay. Thank you?---I can't remember. I didn't even realise that he was there.

PN652

No, I understand that. Just in conclusion, Mr Humphreys – or almost conclusion – can I direct your attention to paragraph 16. This is about the 2022 negotiation. You say, as obviously is the case, that the employer had a log and the TWU had a log of claims?---Mm-hm.

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN653

I want to show you that log of claims. Might Mr Humphreys be shown the annexure of Mr Byrne's statement – well, Mr Byrne's statement, I suppose, and I'll give you a page number; it's BB4. All right, the annexure is BB4 and it starts at page 564.

PN654

Are you able to see those paginated numbers, Mr Humphreys? They are in the bottom right corner?---Page 564. Are you talking about 565?

PN655

Well, I wanted to start you at 564, but 565 I think is the log claims itself, isn't it?---Yes.

PN656

Yes, so you would be familiar with that document, wouldn't you? Is that the log that you referred to at paragraph 16?---(No audible reply)

PN657

Take your time.

PN658

THE COMMISSIONER: The log itself is at page 555 on TWU letterhead and it might be easier to read?---Okay. Thank you.

PN659

If you're not wanting to work in tables.

PN660

MR WILLIAMS: What page number was that?

PN661

THE COMMISSIONER: Page 555.

PN662

MR WILLIAMS: It might be the covering letter, is it?

PN663

THE COMMISSIONER: No, it has the whole lot.

PN664

MR WILLIAMS: Does it?

PN665

THE WITNESS: Yes.

PN666

MR WILLIAMS: So it is, Commissioner.

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN667

THE COMMISSIONER: Presumably the company has put together the document 565, haven't they?

PN668

MR WILLIAMS: Yes, we did, we did. I have been focusing on the log of claims that is set out in the table, but you're quite correct that the letter has essentially the same information in it and the table, I think, is a construct after the events and discussions. The best reference to the claim is the letter, I agree.

PN669

Do you have that, Mr Humphreys?---Yes.

PN670

The letter. You see over the page, page 2 of the log, it says this:

PN671

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

PN672

You see that?---Mm-hm.

PN673

You would understand, I'm sure, that the making of that claim is not consistent with your belief that the meal breaks were paid and that the payment was related to the time the crew members spent outside the vehicle?---How it is – to be quite honest, how it reads, yes.

PN674

Did you have anything to do with putting together the log of claims?---I was on the – I was one of the delegates for it, yes.

PN675

So it didn't look odd to you when you reviewed it?---No.

PN676

Because you knew very well that the status quo in 2022 was that Linfox Armaguard had withdrawn paid meal breaks and that there was no suggestion at any time that there would be payment for time spent outside the vehicle?---(No audible reply)

PN677

That's why it didn't look odd to you; isn't that correct?---I would say so.

PN678

I'm sorry?---I would say so.

PN679

Yes. Going back to your statement, paragraph 17, you say:

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN680

*We rejected the employer's offer and again we stated that we wanted a 7 per cent rise in the first year, and the reason we wanted 7 per cent is that they had taken 4 per cent off us due to the removal of the paid meal break allowance.*

PN681

?---Yes.

PN682

Yes, so that reflects your understanding that Linfox Armaguard was no longer required to pay the meal break allowance?---No, well, that was – my understanding was that's what it was called – it was for security reasons, but that was – everybody used to call it that, but that was what it was for. It was because of the security reasons and that's the reason for – it was just – that was just what it was called. It was never – it was for the security of the truck and that's what it was, to have our lunch in peace sort of thing, but - - -

PN683

Whatever it was – sorry, Mr Humphreys, you finish?---No, how it was written there is probably my fault. It was always for that - - -

PN684

Whatever it was called or whatever it was for, Linfox Armaguard have stopped paying it, haven't they?---Yes.

PN685

Yes, whether or not drivers decided to spend time in the vehicle or whether or not they spent time in the community, Linfox Armaguard was no longer paying it?---Yes.

PN686

So you went into the 2022 negotiation with an objective to either get it back or, alternatively, to get a pay rise which covers that - - -?---Yes.

PN687

But that reflects your understanding that at that point you didn't have it, doesn't it?---No, we lost – they took it away on 9 August 2021.

PN688

So you remember – you're an office holder in the TWU, aren't you? And you understand the TWU to be a capable and well-resourced union?---Yes.

PN689

With a strong focus on member rights?---Mm-hm.

PN690

And not the kind of union that would walk past an underpayment claim without taking decisive action. Do you agree with that too?---Yes.

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN691

So if the union, the TWU, had thought that Linfox Armaguard was in breach of the enterprise agreement by taking away the meal break allowance, to use your terminology, it would have been a wages claim, wouldn't it?---Well, the – when it was first taken away, it was, I think it was the ACT and Tasmania. Or it was, like, the national body said that we were going to run this. Because we wanted to run this. And they said, 'No, can we run it and can you hold back. Can you – just to see how the outcome of this is'.

PN692

All right, but in the 2022 negotiation you were arguing for a pay rise to compensate for it?---Yes, that's what the members wanted.

PN693

Well, what if Linfox Armaguard had said, 'All right, we agree to seven per cent on that basis because you've lost the paid meal break allowance', would we still be here?---Probably not.

PN694

You think we wouldn't be. Because it would be a bit rich if you'd made a claim based on an assumption that the allowance was no longer payable, and then as soon as the ink was dry on that agreement, you came back and made a claim for it anyway. That'd be pretty – it'd be a bit deceitful, wouldn't it?---Well, I think there would have to be something – they would have written something into the clause, I would say.

PN695

Right?---Because, like, I said in paragraph 19 – 18, with Phil Prior, he agreed with me. He said that I was right.

PN696

Well, I suggest to you that in fact that's not true and that Phil Prior didn't say that?---Yes, he did – yes, he did.

PN697

That's your recollection. But I might suggest to you that he didn't?---Well, I'm telling you, he did.

PN698

And then your evidence is that it suddenly disappeared?---Two days later we were told that his services were no longer required by Armaguard.

PN699

Right. And you want the Commissioner to draw some link between those two events, didn't you?---I – I – I – it's not for me to tell the Commissioner what to draw, I'm just telling you what was said and what happened after the meeting.

\*\*\* RUSSELL MICHAEL HUMPHREYS

XXN MR WILLIAMS

PN700

Mr Humphreys, when was it that you decided on the strategy of arguing in this Commission, that the 'lunch in truck' payment was still payable under the

enterprise agreement, when did you come up with that idea?---When Darren Jones first had the video link with us in 2021.

PN701

You see the problem is you didn't. It was more than a year after that that this application was filed on 31 March 2023?---Yes, that's why I said to you, we were asked by the national body not to do anything until the – I think it was the ACT and Tasmania, they wanted to run that in the Commission. We were asked – we said that 'no, we believe that we should run it', and they were told – we were told, 'No, can you please wait' and that's why it was (indistinct) - - -

PN702

But you know that those proceedings were decided against the union's position?---Yes, I believe it was, yes.

PN703

So you didn't take 'no' for an answer, did you?---No.

PN704

Yes, at that point you brought these proceedings?---Yes.

PN705

Yes. So, Mr Humphreys, my suggestion to you is that, at no time, including now, do you honestly and genuinely hold the belief that under the 2016 enterprise agreement and subsequent agreements, the 15 minutes paid meal break is payable in circumstances where drivers spend lunch time – spend time outside the truck?---Yes, I do believe it.

PN706

You do believe that, do you?---I do believe that we should get it, yes.

PN707

I don't have any further questions for the witness.

PN708

THE COMMISSIONER: Thank you.

**RE-EXAMINATION BY MS DALTON-BRIDGES**

**[12.49 PM]**

PN709

MS DALTON-BRIDGES: Mr Humphreys, Mr Williams here has taken us to incredulity around changing of positions that happens in bargaining. Has that happened in your experience before? Where there's been a change in a position with the employer because we've threatened, perhaps, industrial action or taken industrial action?---That's correct, yes.

\*\*\* RUSSELL MICHAEL HUMPHREYS

RXN MS DALTON-BRIDGES

PN710

Can you tell us about one of those instances?---Well, we had one in our last EBA. They turned around and said that we'll get nothing that we – no payment – we've got no money. We got the big spiel about how good, how bad it was and



everything like that. And we said, 'Okay', we went back to the members. We said, 'All right, so what do you want?' They asked for protected action. It was granted. We took protected action and we ended up with \$2,000 sign-on fee, three and a half per cent – three and a half per cent pay rise – four per cent pay rise.

PN711

Thank you. Four and a half (indistinct)?---Four and a half, was it. Yes.

PN712

So, it's in your experience, that employers will often say one thing and then end up doing something vastly different when put under pressure from the membership.

PN713

THE COMMISSIONER: Is that a statement, Ms Dalton-Bridges, or a question?

PN714

MS DALTON-BRIDGES: I'm asking, Commissioner.

PN715

THE COMMISSIONER: No, we don't start it off, Ms Dalton-Bridges, with 'It's in your experience'. You need - - -

PN716

MS DALTON-BRIDGES: I said, 'Is it in your experience', I'm sorry if I - - -

PN717

THE COMMISSIONER: Well, I heard, 'It's in your experience'.

PN718

MS DALTON-BRIDGES: Well, I'm sorry if I didn't announce that clearly.

PN719

THE COMMISSIONER: Right, thank you.

PN720

MS DALTON-BRIDGES: But my question was, is it in your experience then, Mr Humphreys, that an employer can start with one position and finish with a vastly different position based on what we do during bargaining?---Yes, because all the – ever since I've been involved with doing bargaining for the union, none of our negotiations has gone under nine months. So it started (indistinct) and nine months later, they were either still going or being finalised.

PN721

And can you tell us have the employer's position often changed very much from the beginning to the end of that nine months?---Yes, they have. And also the employer's people. Because when we first started negotiations, I think it was 2019, I think, we started with one lot, and we ended up with a completely different lot.

\*\*\* RUSSELL MICHAEL HUMPHREYS

RXN MS DALTON-BRIDGES

PN722

And did that affect the bargaining, in your opinion, Mr Humphreys?---Yes, it did. It – it – they went from, like, being hardball to, that we would say, we'd take protective action and then somebody else would come in and then at the end of it, let's get this done. And that's how it - that's how most negotiations are done.

PN723

So it's not unusual for an employer to take a position at the beginning of bargaining, be quite opposed to something and then really change their position by the end of that bargaining?---It happens a lot.

PN724

Did anyone ever monitor - going to 'lunch in the truck' when you had to spend 15 minutes in the truck – did anyone ever come and check the diner sheets or check the timings or do spot checks on you as to whether you'd spent 15 minutes in the truck or not during that lunch period?---Never – never.

PN725

So, therefore, when we're talking about the 15-minute payment, did it seem the same in 2015 and 2016, to you?---Yes.

PN726

And when you're talking to the yard, do you think it might have – what did people say to you, in the yard, about the payment?---Because back, like, from 2000 and onwards, it was always referred to as 'lunch in truck'. Even when the – the wording changed to – for security reasons – everybody called it 'lunch in truck' because they'd been calling it that for 15 or 16 years. And that's just how they called it.

PN727

So there was a bit of a colloquial thing, that even though it was a meal break payment now, people still called it 'lunch in truck'?---Yes. Some people still call it that now. They still call it that.

PN728

And in terms of, for security reasons, and Mr Williams spent quite a bit of time talking about the security reasons, whether you were in the truck or out of the truck; how do you feel about your lunch break when you're out on the road, Mr Humphreys?---Well, like – like I said, we'll go to the toilet, get our lunch and go and sit in – in the truck. Because times have changed now where people just wanted the money. Now, they also want your firearm. And, you know, you cannot sit down in the middle of a busy shopping centre and be relaxed and have your unpaid break when you're constantly moving out to someone, if they want to, you know, come up behind you or they want to grab your firearm or anything like that. The safest place to be – and even for security and that is – is in the truck.

PN729

So are you free from duty during your meal break?---No – no, you can't be, because you are wearing that firearm.

\*\*\* RUSSELL MICHAEL HUMPHREYS

RXN MS DALTON-BRIDGES

PN730

When you returned to the depot, back in, you know, early 2000s, were you free from duty?---Yes, because you took your firearm off. Or you didn't have to take it off again because you were back at the depot. You were in a secure facility. I can't – too much about back then – because I, like, I said, I was at QTM. But that was my belief, that they could either take it off or they could leave it on because you were in a secure facility.

PN731

Can you go to the barber during your lunch break?---No.

PN732

MR WILLIAMS: How does this arise out of any question I asked?

PN733

MS DALTON-BRIDGES: All right, thank you so much, Commissioner. That's all I have for Mr Humphreys.

PN734

MR WILLIAMS: Commissioner, there's something arising.

PN735

THE COMMISSIONER: Well, do you want to wait till I ask some questions and then you can - - -

PN736

MR WILLIAMS: After what, sorry?

PN737

THE COMMISSIONER: I ask some questions.

PN738

MR WILLIAMS: Of course, I'm sorry, Commissioner. I just wanted to flag that I've got – there's a couple of things arising and I need to ask about three questions, with your permission.

PN739

THE COMMISSIONER: Sure. All right, well, technically, you're not allowed to. But I'm going to ask some questions but that then opens things up. All right, so Mr Humphreys, do you accept that the 2015 wording was quite strict and the payment was only made if there was a requirement by the employer for employees to have 15 minutes in the truck?---When I was in the truck, Your Honour - - -

PN740

Commissioner's fine, thank?---Sorry. That never come up. It - - -

PN741

No, whether you're paid it or not, do you accept that the 2015 wording only gave an entitlement if you were going to have lunch in truck?---Yes.

\*\*\* RUSSELL MICHAEL HUMPHREYS

RXN MS DALTON-BRIDGES

PN742

Right. So people were paid it whether or not they did that or not?---Yes – yes.

PN743

Right. And you know that the employer feels as though they probably overpaid people, relative to the 2015 wording?---Well, Your Honour – sorry, Commissioner – the issue with that is that when Darren Jones had his video link with us and said that they were taking it off us, I said to him, I said, 'So, what you're saying to me is, you've overpaid us since 2016 or' and that, I said, 'You're trying to tell me that for five years you've overpaid us and you've never said a word'. And I couldn't get a response from him.

PN744

All right. Well, what do you think when the employer takes it off everybody in 2021, and then there's negotiations for 2022, and the union says that they're asking for reinstatement of it. And then actually withdraw the claim for reinstatement. Why wouldn't you insist on particular wording in the 2022 agreement, to make sure that what you thought was right, was inserted into the 2022 agreement?---Are you talking about the one where – for security reasons? Is that – that – that statement (indistinct) - - -

PN745

Well, remember – it's the same wording between the 2019 and 2022 agreement?---Yes – yes.

PN746

You think it means one thing. Employer says, in 2021, 'No, it doesn't and we're taking it off you'. Why wouldn't you insist that it's water tight in 2022?---I did. I said to them, I said we were still under an EBA. I said, 'I don't understand why you're doing this when the EBA runs out at the end of December'. I said, 'I don't understand why you're doing this now'. I said, 'You're - - -

PN747

But the words in the 2022 agreement are the same as 2019. If you thought you were right, why wouldn't you tidy that up?---I can't – I can't answer. I - - -

PN748

You think that they were quiet about overpaying for five years or so but this is a live issue in 2021?---Yes.

PN749

People are going to lose, I heard, maybe \$5,000 a year?---It was about \$67 a week, I think it was back then, yes.

PN750

Okay, so it's \$2,500 a year?---We did – we did put up – we did put up – we had meetings with – who was it back then, was it Troy? Someone. And we did have a lot of questions for them and at the end of the day Darren Jones just turned around and said, 'Well, I don't care what you think, that's what we're doing'.

\*\*\* RUSSELL MICHAEL HUMPHREYS

RXN MS DALTON-BRIDGES

PN751

All right, well, go to page 606 of the Court Book, thanks?---Meeting four?

PN752

Yes, now you're not there are you? At that meeting?---No.

PN753

All right. If you go over to the bottom of page 607, the meeting notes – remember this is claim 15, and it doesn't come up until the bottom of the meeting notes. And it says, 'TWU's provided wording changes on item 15' and then over the page it says, 'TWU will withdraw claim 15, pending an offer from the company'. And remember, the claim is that the 'lunch in truck' payment be reinstated?---Like I said, Your Honour, I wasn't there. I – I didn't – I didn't know about this one.

PN754

Well, that's where the TWU lands. They say they're going to withdraw the claim pending an offer from the company and then, as I understand it – and this is July 2022 – the agreement is soon struck. So where you were asking for 7 per cent as a trade-off - - -?---Mm-hm.

PN755

- - - to let it go, that didn't happen?---No.

PN756

But is it let go by the TWU organisers, delegates?---Your Honour, I can't answer that one because like I said, I wasn't there and I certainly wouldn't have put it (indistinct), no.

PN757

From memory, it's flagged in the log of claims that TWU want it reinstated?---Yes.

PN758

As though potentially there is an acquiescence that it's been lost?---I think what that was, was when we had our yard meetings with the boys and the girls and that, they turned around and they said, 'We want the lunch in truck. It should never have been taken off us', and I said, 'Yes, yes, I agree'. Through our negotiations with and our meetings with the road crew and that, it was that if they won't give us back the lunch in truck, we want a 7 per cent pay rise to compensate for it.

PN759

I understand that?---That's as far as I can (indistinct).

PN760

But if they won't give it back, does it mean that it's recognised that it's lost, because the employer believes there is no entitlement?---Look, that's what some of them thought but I was never of that belief. Myself and Nathan and James, we were never of that belief, that it was lost forever. We always thought with that clause that we had - - -

\*\*\* RUSSELL MICHAEL HUMPHREYS

RXN MS DALTON-BRIDGES

PN761

Then why do you make a new agreement with the same words?---I can't answer that.

PN762

Why not go, 'We think you're wrong. These are the words we insist upon'?---Yes, I can't – I can't answer that one, sorry. I didn't realise – like I said, I wasn't at that meeting, so I don't know. But I genuinely believe that we were still entitled to that, that payment, and still are.

PN763

It was put to you that you didn't bring a claim. There's no correspondence, is there, that a claim is on foot or you're just waiting on the ACT?---We were asked by the national body to wait for the outcome of the ACT Tasmania (indistinct).

PN764

But in the meantime – because I think that matter was heard in mid-2022 – in that time an agreement is made and approved, relevant to the Queensland crew?---Yes, like I said, I don't know. Yes, I still think we're entitled to it. I understand what you're saying.

PN765

Do you think it's an improved entitlement from where it was in 2015, where you had to be required to be in the truck? I mean, you might sit in the truck now and have lunch but others might not. They might roam and be vigilant?---Yes, they could be, yes.

PN766

Isn't that an improved entitlement for employees, if you're right?---The trouble – I understand – like, the trouble with that is that if they were hit, if they did get hit or something, it would then be, 'Why weren't you in the truck'? You know what I mean?

PN767

That's not the evidence that the respondent's witnesses are giving. There's no requirement to be having lunch in the truck?---No, no, there's no requirement to have lunch on the truck.

PN768

And you wouldn't be disciplined, would you?---If you didn't have it? If you had it in the truck or you didn't have it in the truck?

PN769

Well, either way – you're not going to be disciplined, are you?---No, no.

PN770

Your colleagues are free to have lunch outside of the truck in a sensible way?---Yes, hm.

\*\*\* RUSSELL MICHAEL HUMPHREYS

RXN MS DALTON-BRIDGES

PN771

They're not going to be disciplined?---No.

PN772

And you think they're entitled to the payment?---Yes.

PN773

Which provides a greater entitlement than the 2015 agreement because before you were pre-required to be directed in the truck for 15 minutes, to be entitled to it, whether you were paid it or not?---Mm-hm.

PN774

It seems as though you were paid it?---Yes.

PN775

But that's an improvement, isn't it, if you don't have to be in the truck and you can walk around?---It could be for some but the case was that we – we could not do a lot of things other people could do.

PN776

I understand that but it's still an improvement, isn't it?---Yes, you could put it that way, I suppose, yes.

PN777

Do you think that that would be advertised as, 'Guys, you're not bound to sit 15 minutes in the truck for the entitlement'?---It never was, no.

PN778

No, it was never was?---No, no.

PN779

Anything arising, Mr Williams?

PN780

MR WILLIAMS: Commissioner, reflecting on that, I don't think there is. Mr Humphreys made some comments about risk of attack. I know my clients would disagree but Mr Humphreys is entitled to his view. I don't need to ask any questions about it.

PN781

THE COMMISSIONER: Thank you. Ms Dalton-Bridges.

PN782

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

PN783

THE COMMISSIONER: Nothing arising? All right, thanks, Mr Humphreys. You're now free to go, thanks for giving evidence.

<THE WITNESS WITHDREW

[1.06 PM]

\*\*\* RUSSELL MICHAEL HUMPHREYS

RXN MS DALTON-BRIDGES

PN784

Is now a convenient time for lunch break, parties?

PN785

MR WILLIAMS: It certainly is.

PN786

THE COMMISSIONER: All right, how long do you need?

PN787

MS DALTON-BRIDGES: Just long enough to be able to order and eat, Commissioner.

PN788

THE COMMISSIONER: All right, say 40 minutes?

PN789

MS DALTON-BRIDGES: Yes.

PN790

THE COMMISSIONER: We'll come back at 1.50 then.

PN791

MR WILLIAMS: Thank you.

PN792

THE COMMISSIONER: I will attempt to get out of the court room. Thank you, we'll adjourn.

**LUNCHEON ADJOURNMENT**

**[1.07 PM]**

**RESUMED**

**[2.00 AM]**

PN793

THE COMMISSIONER: Who do we have, Ms Dalton-Bridges?

PN794

MS DALTON-BRIDGES: Commissioner, we have Mr Fernandez.

PN795

THE COMMISSIONER: Thank you.

PN796

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

PN797

MR FERNANDEZ: Troy (Indistinct) Fernandez. (Address supplied.)

**<TROY FERNANDEZ, AFFIRMED**

**[2.01 PM]**



**EXAMINATION-IN-CHIEF BY MS DALTON-BRIDGES**

**[2.02 PM]**

PN798

MS DALTON-BRIDGES: Mr Fernandez. You've got your statement with you?---I do.

PN799

How many paragraphs is your statement, Mr Fernandez?---It is 26.

PN800

And how many annexures?---It has four.

PN801

Okay. Are those words in the statement of yours true and correct?---Yes, they are.

PN802

Has there been any amendment or adjustment that has been caused to be made since we entered the statement into evidence?---No, there hasn't.

PN803

Thank you, Mr Fernandez.

PN804

THE COMMISSIONER: All right. You'll be asked questions in cross-examination now.

**CROSS-EXAMINATION BY MR WILLIAMS**

**[2.02 PM]**

PN805

MR WILLIAMS: Hi, Mr Fernandez. My name is Dan Williams. I'm the advocate for Armaguard, Linfox Armaguard. I've got some questions for you?---No worries, Mr Williamson.

PN806

Yes. Can I pass you two documents – two industrial instruments which I will make some reference to. One is the transport. Cash and transit award 2020 and the other one is the 2015 Metropolitan Agreement which was the one which was superseded by the 2016 agreement. And I have a copy for the Commissioner as well. I think we might have handed the Metropolitan one up before.

PN807

THE COMMISSIONER: No, you handed up the country one.

PN808

MR WILLIAMS: Did I?

PN809

THE COMMISSIONER: Which I was a bit amused by - - -

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN810

MR WILLIAMS: There's the Metropolitan one. Just if we have a look at the award clause in relation to meal breaks, it's Clause 15. I'm not sure you're familiar with it. And it commences, as you'll see with a – well, the heading in fact, 'Unpaid meal breaks' but the basic rule I think is that you agree in your statement, I think is that the basic rule is that the meal break is unpaid? Similar to many awards?---Mr Williamson, where are you referring in my statement?

PN811

Well, I wasn't going to go to your statement but I had understood that there was no quibbling with the basic rule being that the lunch break is unpaid? That being the basic rule, but of course, there's an argument about how it's qualified. But for the moment, if that's an issue, I won't refer to your statement. I'll just refer to the award?---Okay.

PN812

THE COMMISSIONER: It's Mr Williams, not Williamson?---Sorry. I heard Williamson. I apologise for that.

PN813

No, understood.

PN814

MR WILLIAMS: I didn't pick that up either. Thank you, Commissioner. (To witness) So under the award, the way it's structured is that there's an unpaid meal break between 40 minutes and one hour. Do you see that?---Yes, I do.

PN815

Yes. And then the qualification is in Clause 15.2 break inside armoured vehicle. And you'll see that it has a clause in subparagraph (a) which is similar if not identical to the clause in the Armaguard – Linfox Armaguard Metropolitan Agreement pre-2016. But we'll come to that. But you'd agree that the benefit in subparagraph (a) that is the employee will be paid at the rate of time and a half for the time spent inside the vehicle, only applies if the employee is required at the direction of the employer for security reasons to spend some of that time inside the vehicle?---I agree that the award says that, yes.

PN816

Yes. That's right. Now, obviously the Enterprise Agreement can say anything, but that seems to be what the award says?---Yes, that's what the award says.

PN817

Yes, so under the award at least, the time that employee spent during their lunch break outside the vehicle, they don't get paid?---Yes, that's correct.

PN818

And subparagraph (b) says, 'The duration of the meal break must be one hour to enable all members of the vehicle's crew to have some portion of their meal break outside their vehicle if they desire. Do you see that?---Yes. I do.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN819

So that's a – you'd accept that's intended to be of benefit to the employee?---Yes, I do.

PN820

Yes. And you were with the TWU for I think a bit over a decade, weren't you?---Yes, I was.

PN821

And the TWU would be the union which, if there is one, which sort of owns this cash and transit award? When I say own it, you know what I mean? Industrially, you look after it?---Yes, it has a lot of dealings with it, yes. Absolutely.

PN822

Yes. So I'm assuming that at no point has the TWU made an application for Commission to have a benefit available to employees for the time they spent outside the vehicle?---I can't speak to that, I'm sorry. I don't know.

PN823

Well, that was my question, you're not aware that that's happened?---No.

PN824

No. Okay. And you'd also agree that subparagraph (b) seems to be premised on the – on the understanding that having some of the meal portion of the meal break outside the vehicle is a benefit?---Yes.

PN825

Yes. Okay. And if you then go to the 2015 Enterprise Agreement which is the one at 2016 agreement (indistinct) and if we can go to Clause 32. And you'll see that it – it follows its structure pretty similar to the award in that the first caller says each employee is allowed an unpaid meal break. Although it says 30 minutes. So at some point presumably, there was an agreement to reduce it. Are you aware of the circumstances by the way under which it was – it came to be 30 minutes, rather than up to an hour under the award?---No, I'm not.

PN826

So pre-dates you, perhaps? So would you agree that the – that the basic structure is that it starts with the proposition that the meal break is unpaid?---Yes. Yes, it does.

PN827

But then of course, there's a similar qualification. You recall 32.2. And I read that clause as being identical to the same clause in the award, 15.2(a). Feel free to check if you want to, but that's the way I read it and it seems to be an identical clause?---I'm sorry. Could you just repeat that for me once?

PN828

Yes. It seems to be that Clause 32.2.1?---32.2.1.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN829

Is identical to Clause 15.2(a) in the Award? Except that of course, Armaguard is named as the employer?---It doesn't specify a minimum of 15 minutes.

PN830

I beg your pardon? Well, neither does Clause 15.2(a). And that comes in later in the Enterprise Agreement Clause, I accept.

PN831

The 32.2.1 does seem to be the same as 15.2(a) and we get two concepts of 15 minutes and three person crews and later on?---Correct.

PN832

Yes. So it's a fair assumption isn't it that whoever drafted Clause 32.2.1 took that from the award?---Well, I assume so, yes. Yes.

PN833

Okay. And would you also agree that under that clause, there was – there needed to be a direction from the employer under both the award clause and there's the Enterprise Agreement Clause? There needs to be a direction of the employer. That the employee spend some time in the vehicle?---Yes, I do.

PN834

Yes. And that it had to be for security reasons?---Yes, indeed.

PN835

Yes. And the security reasons would have to have a relationship with the requirement to spend time in the truck?---Yes, it does.

PN836

And that would be the security of the vehicle? Not the employee? Or the consignment rather, the vehicle and the consignment?---Well, I had never considered that, Mr Williams, so possibly.

PN837

Well, because the award treats time spent outside the vehicle apparently as a benefit so we can presume can't we, comfortably presume that security reason is not related to the employee security. It's related to the security of the consignment?---Yes, I could – I could see that interpretation.

PN838

Yes. And then in the agreement, as is generally the case, there are some additional (indistinct) or revisions and we're still with 2015 Enterprise Agreement, 'An employee is required to spend time in the vehicle as set out in Clause 32.2.1 will be paid a minimum of 15 minutes at time and a half'. Do you see that?---Yes. Agree.

PN839

Yes. And then it goes on to say, 'Accordingly, employees working on a three person crew will be entitled to a 45 minute meal break.' Do you yourself have experience of a three person crew?---No, that was before my time.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN840

Before your time? So to your knowledge, the three person crews have – are a relic of history now in the industry?---Yes, to my knowledge.

PN841

Yes. Okay. Now, the upshot of it seems to be that an employee who is directed to remain inside the vehicle gets – gets a benefit. But others who are free to go to food courts or café or coffee shops or public amenities do not get a benefit under that clause?---Under that clause. Correct.

PN842

Appreciate 26 being – is a whole different discussion. And there's also no suggestion that an employee who is not in the vehicle going to a food court or an amenity or whatever, there's no suggestion that they're at work, is there?---No, there's not.

PN843

No, because if they were at work than Clause 32.2.3 would apply and they'd have to be paid for it?---Yes, that's correct.

PN844

And if time spent outside the vehicle wasn't regarded as work in any circumstances in 2015, it can't be regarded as work for any purpose in 2022 can it? Or 2023?

PN845

Well, it depends on the application of the industrial (indistinct) that one.

PN846

And also if that depends on what they're being asked to do but if we hypothesise and I accept it's a hypothesis that under the 2015 Enterprise Agreement an employee who is spending all or part of their lunch break in a food hall and is not at work, then that would be like we do apply today?---If the clause remained the same, correct.

PN847

Yes. Thank you. Now, as I understand your evidence having been asked to contribute for these proceedings, you believe that or your evidence is that in 2016, you negotiated an entirely different benefit?---That's correct.

PN848

Is that right? Yes. So one which provided for a 15 minute payment for employees irrespective of whether they were required to stay in the truck?---That's correct.

PN849

Yes. And payable at time and a half?---That's correct.

PN850

So for a 30 minute lunch break?---In the – in the – sorry.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN851

Yes?---In the Metro Agreement, that's correct.

PN852

In the Metro agreement?---Yes.

PN853

Yes, well, I - there is a difference in the country agreement, and we will come to it when we come to that, but in the metro agreement, that's the - your evidence is that you believe you negotiated a different benefit, which was an unqualified entitlement to be paid 15 minutes of the lunch break at time and a half?---That's correct.

PN854

Yes, all right. So, Mr Fernandez, I put this to you in a formal sense. My suggestion to you is that that wasn't your belief then, and it's not your belief now, and instead, what you bargained for, and what you thought you were bargaining for, and what you achieved, was the status quo, in terms of the benefit for employees?---In terms of the (indistinct) figures, yes.

PN855

And also in terms of the circumstances under which the payment was made?---No.

PN856

You disagree with that?---Yes.

PN857

Okay. All right. Do you have a copy of the 2016 agreement with you? And I think it might be extracted in an annexure to your statement. More specifically, TF3. You have that?---Yes, I do.

PN858

Okay. So I just have some questions for you. This is a clause which you drafted, isn't it?---I - yes.

PN859

Yes, okay. So some questions about how it operates, because who could answer questions better than the draftsman? The first one is that, on the understanding that you've just given me, an employee who takes a 30-minute meal break, in every circumstance, gets paid for 15 minutes at time and a half. So on my maths, that's about - they get paid, essentially, for twenty-two and a half minutes of the meal break at ordinary time, is another way to look at it?---Yes.

PN860

So only seven and a half minutes, effectively, of the lunch break is unpaid?---Yes.

PN861

So, clause 32.1.1, then, is false, isn't it?---No.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN862

Well, there are no employees covered under - on your interpretation - no employees covered under this agreement for whom the meal break is unpaid?---Unless you've been allowed one.

PN863

I'm sorry?---There's the word there, 'allowed', in it.

PN864

Well, an employee has to have a meal break?---That's correct.

PN865

Or be paid for it. But on your - how does the - the word 'allowed' doesn't seem to add anything. Presumably, if the employees are allowed to take a break, then they take it. But, on your interpretation, only seven - effectively - only seven and a half minutes of that lunch break is unpaid. So it's not true?---Well, if you read the clause in isolation, that's correct.

PN866

Yes, well, the first clause there, that 'Each employee is allowed an unpaid meal break of 30 minutes', whereas I'm - you're telling me, this clause means that, in fact, they get paid for all but 7.5 minutes of that?---Well, clause are read in conjunction with one another, and they have to be allowed a 30-minute unpaid meal break. 32.1.4 clearly says, 'For the part of the meal break prescribed above - - -'

PN867

Yes?---'- - - employees will be paid at the rate of time and a half for 15 minutes, for security reasons.' So they are read in conjunction with each other.

PN868

Well, why didn't you draft the clause to say that each employee is allowed a meal break of 30 minutes, for which they are paid for twenty-two and a half minutes? It would have been easier, wouldn't it?---Well, that is a suggestion, and if you were in the room at the time, we may have taken that.

PN869

Well, you're not suggesting that if you had proposed to Linfox Armaguard a clause which said, contrary to what it had always previously said, 'Each employee is allowed a meal break of 30 minutes, of which 22.5 minutes is paid', that they would have agreed to that. They plainly would not agree to that, would they?---Well, I can't speculate. I didn't ask. I didn't ask them - - -

PN870

But what you're saying is that you - you're telling the commission that you had an agreement with John O'Brien, on behalf of Linfox Armaguard, that that's the - that was the arrangement?---Well, we agreed on a 15-minute paid break at time and a half.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN871

But - so much easier just to say that the meal break is not unpaid?---But that's not what we agreed to. Like, that's not where we ended, where the - - -

PN872

It's not what you drafted?---No.

PN873

But if you - if that's what you had thought you were trying to achieve, then that's what you would have proposed, isn't it?---The focus was on the requirement of the direction to stay in the vehicle, rather than the 'for security reasons' or whatnot. There was a longstanding practice that the crew were getting paid for time and a half in - for time and a half for 15 minutes on their breaks. There was some conjecture, which, through some disputes - and we had some discussions, to the best of my recollection, around the time, of what is status quo, and how the application of the status quo clause applies, and we had some arguments about that. One of our claims in that agreement was to maintain all current - to maintain pay and conditions, or no loss of pay and conditions, one of which we regarded as a condition, even though it was not written, was the guaranteed payment of that 15 minutes. And hence, we set about putting in a separate clause, or entitlement, to ensure that that payment was made each time a lunch break was taken.

PN874

Yes, that's right. In other words, you were - your evidence is that you were attempting to convert an unpaid meal break into a paid meal break?---I disagree with that view. But it was that - we had a longstanding - there was a longstanding custom and practice that the first 15 minutes of that break was paid at time and a half, and we tried to codify that into the agreement.

PN875

Well, I wonder if that's right. The clause which is causing all of the difficulty is 32.1.4, which you drafted: '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.' Now, your evidence is that that had the effect of meaning that it wasn't an unpaid meal break in any circumstances; it was, in fact, a paid meal break in all circumstances. This is the practical effect of it, as - in accordance with your evidence, isn't it?---Yes.

PN876

Yes. However, it still says there's a requirement for a security reason?---Yes, it has those words, yes.

PN877

Yes. So - we've seen the use of the language 'security reason' in the Award, and in the previous enterprise agreement. Under this clause, what's the security reason? What's the security reason that triggered the requirement for it to be paid?---So, again, the - my recollection of the conversation at the time is that - - -

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN878



Well, no, just answer the question. What is the security reason, to your understanding, which needs to be satisfied for the payment to be made, under your clause?---Well, Mr Williams, I was trying to answer your question. I was just going to say, the recollection of my - of the conversation at the time was that there was security - so the conversation with John O'Brien, with delegates and others - bearing in mind, I don't come from the industry myself - is that they were expressing views that, 'Well, we are unable to take our gun off, for example, during a break, and go and have a pub lunch. We are unable to go outside and have a nap, for example, if that's the way we want to use our break.' They were expressing concerns about - there were various things that they were unable to do during that break because they had that duty to carry the gun, and there was no place to safely take it off and store it within the truck, because - as it was explained to me by the delegates, at the time, was that they sign out the gun in the beginning of the day; they have carriage of that gun; they are to have it on them at all times, and ensure its security; and also, then, at the end of the day, they then are required to sign out that gun, and put it in a security place, which is, you know, a safe of some description. And those were the things that were explained to me. Now, it was, I believe, generally accepted that the circumstances of which we were talking about was accepted by the company, and hence the acceptance of the clause within the agreement, which is different and distinct from the 'lunch in truck' clause, because otherwise, the rest of the clause, really - when we move to just saying, 'Well, you know, the "lunch in truck" only' - sorry; that 32.4 - 32.1.4 only applies in the course of a direction, it would be redundant, because the clause underneath those give those directions, or give that - prescribe that requirement to be able to be eligible for the payment. So they are two separate payments.

PN879

Well, is a - just so I've understood that, are you saying that the security reason which was the trigger in clause 32.1.4 was related to the employees' concerns about the impediments to the enjoyment of their lunch break when outside the truck?---I am saying that they had a view that was expressed, to the best of my recollection, that they were continuing to be on duty, as they were required to - one of the big concerns, but - was that they were required to still have carriage of that gun while on a break.

PN880

But you said they were - they had a view, they were still on duty, but they weren't, were they?---Well, if they had no duty to their employer, and they were released, then they would have no - like, they would be able to release themselves from the gun, and the duties that come with those.

PN881

Right. See, when the - under the old - the 2015 regime, and consistent with the award regime, there's no doubt that the security reason is the requirement to stay inside the truck, isn't it? No doubt about that?---It's a direction to stay - - -

PN882

Yes?--- - - - inside the truck, yes.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN883

But the security reason is related to the requirement to stay in the truck?---Yes, there's a direction - yes, the security - I can - - -

PN884

Yes, so what's the security reason associated with the time that they spend outside the truck?---Well, Mr Williams, as I - - -

PN885

I understand - - -?--- - - - explained to - - -

PN886

- - - your evidence about the concern, so you don't need to repeat that, unless you want to, of course, but what's the security reason?---Well, the security reason, as it was explained to me, and as I was part of the conversations in the EBA, was around the capacity to be able to - mainly around the responsibility of carrying the gun, and the impacts of what that has on their duties to be alert while having the gun. They also are not required - you know, couldn't have a nap, for example, couldn't have a pub lunch - - -

PN887

Yes?---All of those sorts of things.

PN888

But how is that a - I understand the concern, and even the view - even the view, which might not be - which might be wrong, that they were on duty. But what's the security reason?---Well, Mr Williams, I imagine that if a gun went missing, that would be quite a concern.

PN889

So they were being paid money against a possibility that their gun might go missing?---Well, no, we had a separate - the purpose - if I can just start that answer again. The focus on 'for security reasons' in the drafting, in my view, takes away from the purpose of what the clause was designed to do. We used similar language of the existing clause, and we made it so that there was no requirement to stay in the truck or direction to stay in the truck.

PN890

Yes. But I'm just interested in what - in how the Commissioner can understand what's meant by 'security reason'. Your evidence, if I've read it properly - we will come back to it, and I may challenge aspects of it - is that John O'Brien wanted to take out the term 'security reason', and you put it back in. Is that right?---So my recollection of the events as per the statement and there was a statement - I just want to refer to my statement for a minute.

PN891

Of course, take your time. I can probably help you with a direction. I'm sure you know your statement pretty well.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN892

Paragraph 14 – paragraph 14?---Yes, and I had initially drafted the clause. It had gone back and forth between us on a couple of occasions. Sometimes there was not all documented and regrettably since I've left the TWU I don't have any of the records that were related to my work at the time. But there were verbal discussions and for whatever reason, it went back in. We had a view that it wouldn't change the payment that was paid. So the members would not be disadvantaged and it codified the 15-minute custom and practice payment that had existed for a period of time.

PN893

So I may not necessarily accept everything you say in paragraph 14, including O'Brien's role in the draft, but if I hear that rightly you – it was your side that insisted on retaining the term, 'Security reasons', for qualification. Is that fair or do you just not recall any more?---No, I believe that, you know, when – I believe that that was us that had reinserted it to a consistency on the - - -

PN894

So you must have had something in mind as to what security reasons meant?---Well, as I have previously expressed, that there was a – the nature of the conversations at the table were that there was a concern or that – well, Armaguard had a claim on the table that they wanted to remove a payment. We wanted to make sure that the custom and practice of that 15-minute payment had stayed. The security concerns of which the delegates were talking about were around capacity to be free – not singularly, I must say, but capacity to be free from duty with their responsibility of carrying the handgun.

PN895

All right. Well, let's have a look at 32.1.6. So this relates to the circumstance where an employee is required to remain inside of an armoured vehicle for longer than 15 minutes of the meal break at the direction of Armaguard, for security reasons. So similar to the 2015 wording and the award, in clause 32.1.6 the security reason is related to the requirement to stay in the truck. Do you agree?---Yes, I do.

PN896

But you're saying that it's a different security reason in clause 32.1.4?---Yes, I am.

PN897

So did it occur to you when you were drafting this that if that truly was your intention you might want to use different words?---Honestly, it didn't. It was – when we moved to 32.1.6, it is again the – so that it's not doubled up of any payments, it then starts after 15 minutes.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN898

So you're saying that the security reason in 32.1.4 is essentially related to the employees' circumstances and perhaps some risk that you say they adopt both leaving the vehicle but the security reason in clause 32.1.6 is specifically related to them being in the vehicle. Is that really what you're saying?---Well, Mr Williams, yes, I am. I wasn't an expert drafter of – of clauses at the time. We

were setting about to try and ensure that we preserved a payment, a payment that had existed for a period of time. We felt that that clause did achieve that end.

PN899

Are you a part of the TWU structure, if I can put it that way, in terms of enterprise bargaining – that included state officials and national officials, didn't it?---For the Armaguard agreement?

PN900

For any enterprise agreement?---Well, no – some agreements have national people involved in them and in this case, there was no national people involved in it.

PN901

But if you were going to propose a clause which had fundamentally different impact to a clause which had been in the industrial instruments for many years and in fact it was in the award, that's something you'd have to take upstairs, isn't it – to either the state or the national executive? You couldn't do that on your own, could you?---No. We didn't have to take that to the national executive nor did we have to take it to the state executive. It was a clause that when we drafted it, we felt comfortable at the time that it was representing the intent.

PN902

Did you get any approval from either the state or the national executive to the proposal which was eventually approved?---No, not from – so to be clear, this is a state agreement so the national executive didn't have input on any of the negotiations and in terms of the state executive, they – unless you're referring to the secretary, who then signs off on the document at the end, not really. We had an industrial officer at the time look over the document. But that was – that was generally our processes, that we could negotiate these documents, we would take it out to the delegates, structure the delegates would be comfortable if the yards were happy with it. Yards would have a vote on whether or not we were going to accept it. Then we would take it back to the employer and say, 'Look, you know, obviously we're comfortable with it'. There would be – if there were complex things or things that we thought were tricky, we would have the industrial – seek assistance from the industrial officer and then if everything was fine then it would just go through the process of the document going to a vote, a proper vote through the required processes of the – of the Act and that would be it. It would be signed off by the parties.

PN903

You referred to a couple of things: firstly, that you said you weren't an expert draftsman and also that you had access to expert industrial officers. Didn't the fact that you were creating a fundamentally different benefit with fundamentally different triggers – in fact on your evidence no triggers – didn't that seem to you to be something perhaps you should get some help with?---So again, at the time in the context of the time we didn't see it as fundamentally different. We saw it as we were removing a requirement or a prerequisite for a payment to be made and guaranteeing that a payment that was being made and had been made for a period of time continued to be made.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN904

See, with respect, Mr Fernandez, you weren't doing that. You were replacing one trigger with a different trigger – that is a security reason related to being in the truck with a security reason related to being outside the truck. That's what you told me you were doing?---Well, that's your argument, Mr Williams, but as I have previously stated I believe and the focus of the clause at the time was about the requirement or the direction from the employer to stay in the truck and the removal of that was the focus and that was the entire point, was to remove a perquisite to receive the payment and that was where we landed to and we thought at the time and have been for a period – from my understanding – even a period of time after this document was registered, that that continued to be paid.

PN905

Well, what would be the situation if Linfox Armaguard directed the crew members to stay in the truck for 10 minutes?---Well, then, they would be – they would already be receiving time and a half so a penalty on a penalty – is that what you're suggesting, Mr Williams?

PN906

No, no, no – I'm just looking at – see 32.1.6 seems to apply when an employee is required to remain inside for more than 15 minutes?---Yes.

PN907

So that can't apply if it's less than 15 minutes. So if it was 10 minutes, what would the pay rule be?---Well, the first 15 minutes they are compensated.

PN908

Well, under which clause?---Under 32.1.4.

PN909

What is the security reason?---Well, you'd have to ask Armaguard that question.

PN910

I think the Commissioner is grappling with the clause and you've told her that security reason in one clause is different from the security reason in the other. But in that scenario, the employees are looking to be paid for 10 minutes required to be in the truck so what's the security reason in clause 32.1.4 that entitles them to be paid?---Nothing prevents – nothing in the clause, and I think I wrote that in my – nothing in the clause prevents Armaguard from requiring somebody to stay in the truck for the first 15 minutes of their break. however, should they not require them to do that or give such a direction they still are required to make such a payment.

PN911

Well, why? Why if the security reason that you point to under clause 32.1.4 is related to them being outside the truck?---Yes, because the core of your argument of course is about the security reasons words, whereas the focus at the time was around the direction.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN912

Well, the Commissioner is going to have to have some regard to what security reasons means and you're the author, so what's the security reason which entitles a crew member to be paid if they're directed to stay in the truck for less than 15 minutes and they have to be paid if at all under 32.1.4?---Well, Armaguard may have all sorts of security reasons, to stay in the truck.

PN913

I'm not playing a game, Mr Fernandez?---No, I'm not trying to either.

PN914

I'm not criticising at all?---I'm simply explaining that at the time, right, there wasn't – there was no trickiness in this. It was just about removing the requirement for a direction so that it ensured the payment.

PN915

THE COMMISSIONER: Is it a gimme, is it?---Sorry?

PN916

Is it a gimme?---Well, it was probably - - -

PN917

You know what that expression - - -?---Yes, I do. I do. But I don't know what I would necessarily describe it like that, Commissioner. I would say that - - -

PN918

But they can get it any which way, you say, because there's no requirement - - - ?---It was part of the – they can get it each way and there was no – it was part of the bargaining of which it was agreed by the employer above the award entitlements and there was, at least at the time, from my recollection and my understanding, that the employer's representatives at the table had some understanding of the inconvenience that the employees had around limitations of some of the things that they are allowed to do and not being able to de-gun during their break.

PN919

But they can't de-gun after the 15 minutes either. So how does it make any sense?---It was a – it was at the time, again, it was just a longstanding practice that, you know, we get it. It's one of - - -

PN920

They got it, didn't they? They got it pre-2016 - - -?---Yes.

PN921

- - - whether they were in the truck as directed or not?---That's right.

PN922

No one was checking up on them?---That's right.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN923

So they just got it, even though it was probably a payment they weren't entitled to if you read the 2015 agreements tightly?---Yes.

PN924

You accept that?---Well, if you disregard the custom and practice clause, yes, absolutely.

PN925

Well, the 2015 agreement says you only get it if you're directed?---Yes, that's right.

PN926

But they were getting it anyway?---That's right.

PN927

So 2016 rolls around – Mr O'Brien is who you're dealing with?---Yes.

PN928

Do you just wear him down with your preferred wording?---Again, this is seven years ago. But I put some wording there. We looked at - - -

PN929

And you took out the heading. You took out the heading. Do you accept that?---Yes.

PN930

Right. The one that says, 'Breaking side armoured vehicle'?---Yes.

PN931

That's gone?---Yes.

PN932

So tell me more about what you did with Mr O'Brien?---Well, so there was a conversation between him and I about trying to just get to a place where the custom and practise was not grey. We wrote it – we had an initial run at the clause. I can't remember, specifically, how many times we spoke about it. I do know we spoke about – I don't know – maybe twice, three times. And we landed the clause where we both thought it would preserve what was a longstanding custom and practise.

PN933

But you included security reasons. So is that a qualification?---Well, I didn't believe it was at the time because, again, the focus – the focus was on the requirement of the direction. And when putting the words for security reasons in there.

PN934

Well, what are – if everyone can roam freely for 30 minutes, as free as one can when one can't go to the pub or put a bet on?---Yes.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN935

And tries to have their back to people what were the security reasons in 2015? What were the security reasons in 2016? If they are free to use the whole half hour to find a place where they feel safe, as vigilant as they can be?---M'mm.

PN936

In the public. But they're not required to be in the vehicle?---And, again, Commissioner like I didn't work in the actual industry myself. So I – what was explained to me by the delegates at the time was that some of the security reasons of which I have outlined to you is the outline to the Commission is that they still have the duties of which there was some – the payment was some acknowledgement, even though the payment didn't go the full 30 minutes, the payment was some acknowledgement that they were still undertaking duties to the company.

PN937

So it was paid under the 2015 agreement for some reason other than what was stated in the agreement?---Yes. It was. It was just paid for the 15 minutes.

PN938

Yes. But remembering there's no direction?---Yes.

PN939

In 2015 for you to eat in the vehicle for 15 minutes?---That's right.

PN940

So people got the money anyway?---That's right.

PN941

So it's paid without any qualifications tested by the employer?---That's right.

PN942

And then you come round to 2016 and you want to retain that, and there's even less qualifications you draft?---Yes. That was the intention.

PN943

Or there's ambiguity because what does 'security reasons' mean when there's no longer any direction required?---And I can - - -

PN944

So I get back to is it – is it trying to retain something that the employees had which probably wasn't a true entitlement in 2015 because they weren't being directed to eat in the vehicle?---It was absolutely trying to retain an entitlement that we argued with the employer at times was a custom and practise under the agreement.

PN945

Right. But you draft up the words. And do you purposely lose the heading?---For staying into the – yes.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS



PN946

Or was this just your best intent?---No. It was because it was understood that they were not necessarily going to be in the truck. That was the point. The point was is that you were getting paid the payment regardless.

PN947

Why not just say that?---Well, I admit that potentially – well, I admit that because we're sitting here as well – that it could have been clearer the way that – and I drafted that at the time – but the intent was to create a separate entitlement.

PN948

And in 2016 the agreement has the formatting of 32.1.4 and 32.1.5 is that right? But it gets lost in the 2019 agreement is that right?---Sorry, can you repeat the question, Commissioner?

PN949

So at page 90 of the court book, on the bottom right quadrant there we have got what is the 2016 Metro Agreement?---Yes.

PN950

And there's 32.1.4, 32.1.5?---Yes.

PN951

That's in the approved agreement. Is that right?---Yes.

PN952

Right. And then in the 2019 and 2022 agreement it becomes even more messy because we lose the formatting and we get sentences jumbled?---Yes. I can't speak to the 2022 agreement because I had left employment.

PN953

Right. No, but at page 460 of the court book these are – that's what you prepared, isn't it? Have you got the court book there?---No, I don't.

PN954

Well, we'll go to 419 first. 419, so on 13 June you say that 32.2 this was not the agreed clause you sent. You said that following to John on the 2 March and it was agreed around the 22 March. And you provide clause 32. And some of that's in red. Do you see 32.1.6 there? You provided the first sentence and then it doesn't make any sense and it's probably mean to be joined with the second sentence. Is that your drafting?---Well, it's come from my email. So I believe – yes, I believe so.

PN955

It doesn't make any sense, does it? 32.1.6 first sentence sort of rolls into the second sentence. It should have been joined?---Yes.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN956

When you're putting that together I mean if there's a three person crew they're meant to tag-team are they? Fifteen minutes in the vehicle? And then spend the

other 30 minutes of their 45-minute break out in the world being vigilant?---That was the old practise, yes when these – the three-man crews, yes.

PN957

Well, they're your words. I don't think any – that's the same in 2016, isn't it? Well, this is – sorry, that is how you get – so it's your words that you have created. So you accept that if it's a three-man crew 30 minutes they could be outside?---Yes, I do.

PN958

All right. And then on page – so that's you on the 13 June but somehow on the - - -?---It's just important. If I may, Commissioner?

PN959

Yes?---To note that it just wasn't relevant because like I understand the point that you're making about that there were no three-man crews to my knowledge. So - - -

PN960

Right. Well, why put it in there?---Again it was an existing part of the clause.

PN961

Was it though? I mean if 32.2 – 32.2.1, 32.2.2 and 32.2.3 was the 2015 agreement. You're now up to six subclauses?---Yes, it existed in both the 2015 agreement. So it was 32.2.2 and - - -

PN962

Not the same way though. There's a whole – if more than 15 minutes is introduced here in 2016. And prior to – well, the 2015 agreement mentions nothing about if you have to spend more than 15 minutes in the vehicle?---No. Unless you're on a three-man crew.

PN963

But you have introduced a whole lot of things here, haven't you? In 2016?---Yes, it was changed.

PN964

Right. Did you tell Mr O'Brien that this is the effect of the clause?---Well, again, like I believe that we had good will at the time and that we were having a conversation about preserving an existing custom and practise. That was the intent. I was of the understanding that he was comfortable because there was quite a focus on the Armaguard's losing of – loss of revenue over time. So it's each of their agreements they would open up with a presentation about how cash is going down and all of those sorts of things. And so we were having a – that provision would not be an additional cost but it was a preserving of an existing custom and practise or a cost that they had already been paying.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN965

But if the 2015 words were retained and enforced then people wouldn't be entitled to anything because it wouldn't have been at the direction of the

employer?---Well, we had an argument with them at the time. My understanding is the union did or that there was a custom and practise.

PN966

It was a gimmick. People were getting it, whether they were eating their lunch in the truck or not?---Yes. I agree with that, Commissioner. They were getting that payment.

PN967

Yes?---And it was – as we put to them that we believe it was the custom and practise that it was a longstanding custom and practise.

PN968

Okay. And then you trade off the country guys. They're reducing their penalties for their future agreement in 2016. But the metro guys you're trying to lock them in without you think any qualifications whatsoever?---Yes, I do.

PN969

Right. Was that open and transparent to the company?---Yes. I wasn't trying to hide anything from John. Like we had a good working relationship – John and I. Like it was not – and then even – so there was a bit of turbulence between – well, initially when we started our negotiations with Mr Craiglea and this was the (indistinct) and we had two delegates - Mick Green and Craig – no, Craig Matthews. Craig? What's his name? I'm trying to remember. But Mr Matthews who was – who were delegates. Then through the course of the negotiations I became - or I took over and then there was Mr Hurdell and - and some new delegates team. But on the employer's side, John, who we had dealt with over many years, was the employer right up until towards the end, when they had a new team - Kobie also came in - and we were just settling matters at that point. So it was very openly discussed at the table about - - -

PN970

And Mr O'Brien says that, you know, 'It doesn't cost us anything extra.' Is that what he says?---That - - -

PN971

Somewhere?---That's what my understanding - - -

PN972

At around that time?--- - - - of his - yes, it was that it was no additional cost to the company, because it was already happening.

PN973

Can anyone help me out with that?

PN974

MR WILLIAMS: As to where it is, Commissioner?

PN975

THE COMMISSIONER: Where Mr O'Brien writes to someone and says - - -

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN976

MR WILLIAMS: Yes.

PN977

THE COMMISSIONER: - - - 'It's not going to cost us anything extra.'

PN978

MR WILLIAMS: It's on Kobie Smit's statement. And it's at KS6. I'll just get a court book reference for you.

PN979

THE COMMISSIONER: Page number (indistinct) - I've found it, 174. Is that right?

PN980

MR WILLIAMS: Was it 174?

PN981

THE COMMISSIONER: Yes.

PN982

MR WILLIAMS: Yes. I'm sure that's right.

PN983

THE COMMISSIONER: So this is March. This is before your wording, though, isn't it? And he says to Kate Greig, 'We've agreed to the LIT revision, because it really doesn't give them anything.' But you put him in his place in June or so, don't you, with, 'No, these are the words.'

PN984

MS DALTON-BRIDGES: Commissioner, if I may, there were preceding emails between Mr O'Brien and Troy, on 2 and 4 March, which were also appended to Mr Smit's statement, which go to the agreed wording between the pair.

PN985

THE COMMISSIONER: And what page is that?

PN986

MS DALTON-BRIDGES: That is - - -

PN987

THE COMMISSIONER: I mean, I see something at 172. This is all around March. See - so 172, parties - so, Mr Fernandez, this has a comment that says 'Red green' - sorry - 'Red changes made by TWU prior to the meeting of 3 March'?---Looking at 172, did you say, Commissioner?

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN988

Yes, yes. So the issue about being paid the 15 minutes at time and a half gets pushed up to 32.1.1, supposedly by the TWU, during the meeting. So we have - the basic starting point is the 30 minutes unpaid, but then we add in immediately

thereafter, 'For part of this meal break, employees will be paid at the rate of time and a half for a minimum 15 minutes', and 'for security reasons' is crossed out'---Sorry; is this an email to - - -

PN989

It says that the clause was provided by you on 2 March 2016, and it's marked up by Mr O'Brien on 4 March. The red is what you proposed prior to the meeting, and the green is what was made by the TWU during the meeting. But that's not where the clause ends up?---No, I - as I say, there was some back and forth about it.

PN990

So you're proposing at the meeting, it seems - this is what this tells us - that 'for security reasons' is removed, and it becomes an absolute freebie, at 32.1.1. But it lands, later, with 'security reasons'.

PN991

MS DALTON-BRIDGES: Commissioner, if I may, John O'Brien's email of Monday, 21 March, which starts on 174, goes to this point, and it's then on page 187 where he says he agrees to the above clause.

PN992

THE COMMISSIONER: Thank you - 187. Right.

PN993

MS DALTON-BRIDGES: And he has made reference - - -

PN994

THE COMMISSIONER: That's still not where the clause lands, is it? So it looks as though, at 172, there's work being done, on 3 March, during the meeting. Then, at 174, Mr O'Brien says, 'We've agreed to the revision. It doesn't really give them anything.' We have what that might look like, at 187, because 'for security reasons' goes back in. But it still doesn't look like the 2016 agreement, because you come back, at another point, and go, 'No, that's not what was agreed.'

PN995

THE WITNESS: What was the date of my email?

PN996

THE COMMISSIONER: At 419 - 13 June. You reinsert your 32.1.4. So that's 419, and then it's also reflected at 460, in the draft. So you were being asked before by Mr Williams, you know, it's - you've agreed to 'security reasons'; it was out; it looks as though Mr O'Brien did press for that; it looks as though you've agreed to it, in that email of 13 June, 'for security reasons'. But it doesn't look like - well, certainly that the 15 minutes was living up with the 30 minutes unpaid, and now it's back in its own 31 - 32.1.4 subclause. So the clause as proposed by you is what is in the 2016 agreement, Mr Fernandez?---Yes, I believe so.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN997

Okay. All right. Anything further, Mr Williams, then?

PN998

MR WILLIAMS: I've got a few - - -

PN999

THE COMMISSIONER: Yes.

PN1000

MR WILLIAMS: - - - more questions I need to do. Just - on that issue of your relationship with Mr O'Brien - so if we accepted your recollection of the way it proceeded, Mr O'Brien has come to the meeting - the first meeting, or whenever it was - with a claim to - not to pay anything for 'lunch in truck', to completely do away with the benefit. That's fair?---Yes, there was a claim, yes.

PN1001

That's right. And I think, on some estimations, that was a cost to the employees of something like fifty-something dollars a week, and therefore a benefit to the employer of something like \$50 a week?---I don't have the figures, but that may be the case, yes.

PN1002

All right. So it was a pretty important claim, to both sides?---Yes, it was an important claim to our members.

PN1003

Yes?---Yes, we didn't want to go backwards.

PN1004

Well, you might also assume, important to Linfox Armaguard. Mr O'Brien had been sent to the negotiation with an agenda to make it an unpaid - make the whole of the lunch break unpaid, no matter what?---Yes, he looked to do that.

PN1005

Yes. And, on your recollection of history, you said to him that the members looked at - that was rejected, and that, in the course of a friendly discussion, Mr O'Brien not only agreed to withdraw the claim, but agreed for Linfox Armaguard to go backwards, in the sense that the qualification would be taken away. Is that really what happened?---Well, I mean, now that I see this email from the - what is it? 3/3/2016 - it looks like Armaguard were prepared to agree to that.

PN1006

Well, I know you say that, Mr Fernandez. But has that been your experience of trucking executives, that they're such pushovers in enterprise agreement negotiations that they can come at you with a serious claim, and you can say you don't like it, and you want - and in fact, not only do you not like it, you want to make it worse for the employer, and they say, 'Oh, okay'?---That's a terrible characterisation of Mr O'Brien.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1007

And is that your characterisation of Mr O'Brien?---I did not ever call him a pushover.

PN1008

You must have thought it, if that's really what you believe happened?---Not at all. There is respectful disagreements with - there are some employers that you just cannot agree with on anything, and there are some employers that you have working relationships with, and there are some employers that you don't agree with at times but regard as, you know, okay, people. John and I had disagreements, over the time that we dealt with each other, but John was okay. There was no - he understood, he had a job; I had a job, right, and we could have conversations, after negotiations, even if we had a fiery meeting, or we had a - or a happy meeting. It was - I just don't agree - I'm not going to allow words put into my mouth that I'm characterising him as some pushover.

PN1009

But it must have been the easiest repulse - rebutting of an employer claim - a serious employer claim that you have ever been responsible for, surely?---No. There are - you know, we had several meetings, over various items; there was a lot of claims on the table, from job security to - we wanted - the members wanted, you know, higher wage increases. There was all sorts of factors. Things were conceded, at the table - things that we gave up - we just said, 'Look, you know, we get it. We're not going to get that', and we've put it in. That happens - - -

PN1010

Back in March - - -?--- - - - through the course of negotiations.

PN1011

In March 2016, you hadn't even had a serious discussion about wages yet, had you?---I - to be fair, right at this very moment, I cannot honestly tell you the date about which we had a serious conversation about wages, whether or not we had had some or not.

PN1012

Well - - -?---So I'm sorry, I can't give you an honest answer to that question.

PN1013

I accept that?---Yes.

PN1014

And I can help you a little bit. But there was a couple of other questions about the clause I wanted to ask you first. Let's assume - I do gather, it's - from what I'm told - that it's unlikely, but what if they were at the - if they had their lunch break at the depot? Would they be entitled to payment for any part of their lunch break?---Well, the new clause was designed for that reason. They would get paid the 15 minutes.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1015

What's the security reason? They don't have to be in the truck. They're not interacting with the community. What's the security reason?---And again, I would go back to, the focus, when drafting the clause, was on the direction to be - direction to stay in the truck, and on removing that.

PN1016

So, even though none of the concerns that, you say, your members had expressed to you would apply, they would still get it?---Can you express that - repeat that, please.

PN1017

Well, the - we've discussed security reasons related to them being in the truck. We've discussed your perception, or your assertion, of security reasons when they're outside the truck. So what's the security reason that would allow them to be paid if they were at the depot?---Well, again, I can't answer that question. It's a hypothetical that doesn't really occur.

PN1018

Well, what about an employee who just decides to stay in the truck for their full 30-minute lunch break?---Well, if they've made a unilateral decision to do that, then that's on them. They would get the 15-minute payment, and that's it.

PN1019

And what's the security reason?---And I might add that I understand, from things that members have said to me over the time, that they did often go and get some take-away and what not and then go back to the truck and eat their meals.

PN1020

They still get a 15 minute payment for security reasons?---Yes.

PN1021

What if they didn't leave the truck at all, brought a cut lunch from home, didn't need a comfort stop?---Well, still the 15 minutes would apply.

PN1022

The term 'security reason' appears to your perception to be an entirely flexible one. Would that be a fair comment?---I think that again in the context of the conversations that were occurring at the time there was some acknowledgement from Armaguard management that there was still a duty to be alert. There was a duty to carry the handgun, and that came with its own risks, as well as limitations on things that they could and could not do while on that break. And part of that was there was - part of that payment was an acknowledgement of that at the time. However, that's why they did go to the agreement wanting to remove it.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1023

Well, I will make a suggestion to you, which is similar to one I made at the outset, and that is that you weren't being tricky at all back in 2016, and Mr O'Brien wasn't being nave back in 2016. You did have an agreement with him, and that was that the Linfox Armaguard claim for the lunch in truck allowance would continue to be paid in accordance with the 2015 terms; step 1. Step 2 is that alarmed perhaps



by the suggestion that it might be withdrawn you volunteered, because you perceived some ambiguity in the clause, you volunteered to redraft it to cure that ambiguity. But that the purpose of you in doing so was not to change the benefit, but in fact was specifically to ensure that the status quo maintained?---So that's a bit of an ambiguous statement. Maintaining the benefit in terms of payment, and then there's also maintaining the benefit in terms of the custom and practice, which was that it was being paid regardless of whether the person was directed to stay in the truck or not. So there's two - those two things that are being conflated need to be understood that, yes, the payment would remain the same, but the directions where we stay on the truck changed.

PN1024

Mr Fernandez, no one was talking about rescinding the custom and practice that employees were directed to or required to or expected to stay on the truck, were they; nobody was talking about that?---They were talking about removing of the payment.

PN1025

Removing the payment. But nobody was talking about suddenly changing the regime so that the employees were not expected to stay on the truck?---Well, the fact that we have a clause there and they had a claim there it suggests otherwise, Mr Williams.

PN1026

No, Mr Fernandez. What Mr O'Brien was doing was saying that we don't want to pay for it any more. He wasn't saying that there would be anything - any required or expected change in relation to what the employees were doing in their lunch breaks?---Well, Mr Williams, I'd say because of the country agreement that have a slow rationing down of the first 15 minutes of the loading that that would be a change.

PN1027

Absolutely. Let me ask you this question now. I was going to come to it, but you've mentioned it. Were you responsible for the country negotiation as well?---Yes, I participated in it.

PN1028

And so the outcome in the country enterprise agreement was that the trigger was unchanged, it was still linked to the direction to remain in the truck, but that the amount was stepped down over time from 150 per cent to 100 per cent, wasn't it?---Can you please repeat that question.

PN1029

I will take you to the documents if needs be. In fact I will anyway. But you were doing the country agreement at the same time, weren't you, negotiating?---Yes.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1030

So the country agreement deal was that there was no change to the structure of the clause, but it was stepped down over time from 150 per cent to 100 per

cent?---Well, no, it changes from 15 to 16. Because in 16 it has here at 32.1.4, 'For part of the meal break prescribed above employees will be paid a minimum of 15 minutes for security reasons in the following rates.' That doesn't exist in the 2015 agreement.

PN1031

So why did the country employees accept a step down when the metropolitan employees didn't?---So I think there - and I haven't - I haven't prepped myself for the differences in the two agreements more broadly, but from the best of my recollection they were either partly behind on super or they were partly behind on wages slightly, and there was a trade off to get one of those two things up. I can't - to be perfectly honest I just couldn't - but from the best of my recollection that's what I recall, was that it was a trade off to get one of those things.

PN1032

Mr Fernandez, by this stage you're a pretty experienced enterprise agreement negotiator?---I had experience, but I had never done a state-wide agreement like this. So this was - this was a different beast together. I had traditionally been a geographical organiser doing individual yards, much smaller. This one was effectively a state-wide agreement. It had lots of components. It had Cairns and Mackay and it had the country versus the metro, and there was different interests there and different levels of strength and density and interests. Yes. So it was a bit of a different beast, and there was - and then also on top of that there was quite - a log of claims that was done and put together by Mr Williams and the delegates prior to me taking it over. So I didn't have - I wasn't part of forming that log of claims when it came through. And then I had to familiarise myself with these things through the delegates around the table.

PN1033

All right. I don't mean this rudely at all, Mr Fernandez, in fact quite the contrary, but you understand the concept at least of what the good faith bargaining obligations are?---Yes, I do.

PN1034

And I'm paraphrasing here, but you can't be sneaky or deceptive consistent with good faith bargaining obligations?---Yes, Mr Williams.

PN1035

And I'm not going to suggest you were. There's no trap here. But you wouldn't consider yourself to be a sneaky or deceptive person either?---I don't believe I am, Mr Williams, no.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1036

So you would have approached your discussions with the various Linfox Armaguard negotiators in a transparent way without trying to hoodwink them or deceive them?---I had my differences with John, but I had respect for him, and then Mr Smit as well after he took over. Me and Mr Smit we had a good working relationship and I had the utmost respect for him as well. So I have no - you know, I generally had the principle that you've got to have working relationships

because these things go on for a long time. I had no desire to try and, you know, trick him into something that he didn't understand. I believe that he fully understood what was being discussed at the table.

PN1037

I am not suggesting for a moment that you were, Mr Fernandez. What I am suggesting though is that the agreement that in principle that you and Mr O'Brien had was different, and that it was essentially for a status quo with you being tasked with drafting the clause in a way which resolved ambiguity, but not to change the benefit. That's my suggestion?---So again just the way you've phrased that, Mr Williams, that to preserve the status quo in terms of what was being paid, but not in terms of the way that the clause operated.

PN1038

My suggestion is that it was absolute status quo, no change to anything?---Well, that's your suggestion, Mr Williams.

PN1039

All right. Let's come to it then. Might the witness be shown if possible a hard copy, it might be easiest, of the statement of Kobie Smit. And, Mr Fernandez, I'm pretty sure you've had a look at the statement of Kobie Smit for the purpose of preparing your own statement, because you refer to some of the annexures, but I just want to make sure you have a copy?---I think I've got one here. What's the page number?

PN1040

Let's start at page 3, which begins I think at digital court book page 150?---Sorry, 150 did you say?

PN1041

I think I did?---Yes, there it is.

PN1042

So this is the Linfox Armaguard log for want of a better word. I'm sorry, I withdraw that, it's not that at all. It's the minutes of a meeting on 30 January 2016 which contains reference to claims on both sides?---Yes.

PN1043

So we see on the second page there, as one might expect at an early meeting, "TWU seeking 4 per cent each year. Armaguard CPI not agreed, move on"?---Mm-hm.

PN1044

If we go to the Armaguard claims we see removal of lunch in truck. This is on the next page, I'm sorry. It's the first claim under Armaguard claims, removal of LIT.

PN1045

THE COMMISSIONER: Page 153.

PN1046

MR WILLIAMS: I'm sorry. That's right?---Yes.

PN1047

And it's simply recorded as being not agreed?---Yes.

PN1048

That reflects that Mr O'Brien - there's a few of them actually - Mr O'Brien, Ms Greig, Mr Berrich and Mr Balnaves came to the meeting with a claim that the payment for lunch in truck be removed, and not surprisingly that was not agreed at that meeting?---Correct.

PN1049

All right. And if we go over one page we're now at annexure KS4, so I think we're at page 155, and that's an email from you dated 2 March 2016. Do you see that?---Mm-hm.

PN1050

And you say this, you say, 'As discussed at the last meeting.' My understanding is the last meeting was the one on 20 January 2016, but I have to say I'm not certain. At the last meeting you say John O'Brien asked you to provide an amended clause. Do you see that?---Mm-hm.

PN1051

And you say, 'I am of the view that the proposed clause below will clear up any ambiguity.' Do you see that?---Yes.

PN1052

So that doesn't suggest, does it, that there was an agreement between you and Mr O'Brien to actually change the nature of the benefit at all. It rather suggests that you had said, 'Well, I think the clause is ambiguous', and then you'd offered to draft the clause to resolve that ambiguity?---So the ambiguity it goes back to that conversation that we had around custom and practice. So the custom and practice was is that that 15 minutes was being paid for a long period of time, and that there was an argument about whether or not it had to have a direction. So there was a view that was proposed from Armaguard that there was - had to be a direction in order to pay that. We disagreed with that and said, well, no, we have an existing custom and practice which has been widespread and long existing, and we want to codify that, and that would - we believed that this would clear up the ambiguity.

PN1053

Mr Fernandez, do you remember saying that or are you just reconstructing what you think you might have said?

PN1054

MS DALTON-BRIDGES: Objection.

PN1055

MR WILLIAMS: It's a fair question.

PN1056

MS DALTON-BRIDGES: It's not a fair question at all. He's given you an answer.

PN1057

THE COMMISSIONER: No, the question hasn't been put. He can answer the question, thanks, Ms Dalton-Bridges. You can agree with it or not, Mr Fernandez.

PN1058

MR WILLIAMS: Mr Fernandez, it's been a long time since 2016. Is that narrative that you've just put there in your evidence, a clear recollection that you have of what you said, or is it your best reconstruction of what you think you might have said?---Sorry, can you rephrase that again.

PN1059

Well, in answer to my question you gave quite a lengthy explanation of what you said to what was discussed at the meeting. I'm just wondering whether you have any recollection at all of what was discussed, or whether you were just surmising?---No, Mr Williams, I don't propose to say that that was word for word for what I said. However, I was explaining to you for your previous question about the ambiguity between the conflicting two clauses that we had, and the custom and practice and the existing clause and our desire to want to be able to preserve the condition of which our members had enjoyed for quite a period of time.

PN1060

So you're – I am sorry, but please finish if you hadn't finished?---Which was not specifically written and I believe that that was discussed with John at the table.

PN1061

So what you're suggesting is that at the kick off meeting – what appears to be the kick off meeting, Linfox Armaguard makes a serious money claim related to not paying for the lunch in truck allowance. You said it wasn't agreed and that you would – and that in fact, you were going – you wanted to counter-propose that the clause be locked in as main qualified entitlements and John O'Brien said to you, 'That's fine, Troy, you just go and draft the clause you want to draft and we will agree to it'? Obviously I am paraphrasing and there's a bit of hyperbole in there, but is that what happened?---Was that meeting run – hold on.

PN1062

I think it's the first meeting where it's a long time ago and as you'd be very well aware, personal (indistinct) exchange on all sides?

PN1063

THE COMMISSIONER: I note that at the bottom of 153, it says, 'Next meeting, 3rd February', so do we have any further February meeting notes?---So as it - - -

PN1064

MR WILLIAMS: Yes, look, and I have to say I - - -?---So there was meetings – there was meetings that were created on 25 of the 11th.

PN1065

That's correct. That's absolutely correct. I apologise?---And - - -

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1066

THE COMMISSIONER: From when, sorry?---25th of the 11th. The 19th – sorry, 9th of the 12th. The 20th of the 1st.

PN1067

How do you know this? What are you reading from?---The – the table.

PN1068

MR WILLIAMS: It's – it's – and also Mr Smit's statement.

PN1069

THE COMMISSIONER: What page?---And my statement.

PN1070

MR WILLIAMS: Mr Smit's statement. There was a meeting in the previous year. In the previous year?---And – and to be – to answer that question, I wasn't at the – I don't believe – I believe that Mr Williams was at the first meeting and my role - - -

PN1071

Yes, KS1 is the minute of the first meeting on 25 November 2015?---And my role was an observer, I believe.

PN1072

You were there (indistinct) but Mr Williams was also there?---Yes. And so we put – we put our ordinary client practice would be to put our log of claims, explain what they are or what we want. The employer ordinarily would do the same. Sometimes there's immediate agreement, sometimes there's not.

PN1073

Yes. So just so we can perhaps short cut this a little bit. The records that we have been able to find suggest that there was a meeting on 25 November 2015, which looks like a – perhaps what I described as a kick off meeting?---M'mm.

PN1074

There's a meeting KS2 on 9 December 2015 at which it appears that TWU claims were discussed and not the Armaguard claims?---Mm-hm.

PN1075

And then the meeting on 20 January 2016 appears to be a discussion of both. Both TWU claims and Linfox Armaguard claims?---Yes.

PN1076

But it appears at least from the record as I see it, that it was at the meeting on 20 January 2016 when the TWU first responded formally to the removal of the LIT Claim. At least according to the record?---Yes.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1077

Yes. And as I say, unsurprisingly it wasn't agreed. So I guess my - - -  
?---Although, we – we have a record that we didn't – we didn't agree to that on the  
19th – on 09/12/2015.

PN1078

On the which day, sorry?---Ninth of the 12th. 2015.

PN1079

When you say we - - -

PN1080

THE COMMISSIONER: So you're looking at page 80, are you?

PN1081

MS DALTON-BRIDGES: It's Mr Fernandez - - -?---So I have got my own  
statement next to me as well, so I am not sure where my won statement is on the -  
- -

PN1082

THE COMMISSIONER: All right. So you're looking at your Armaguard EA  
2016?---Yes.

PN1083

And it's the bottom, it says, 'Removal of lunch in truck payment'?---Yes.

PN1084

You're looking at that row?---Yes.

PN1085

All right. So it gives a chronology of the position?---M'mm.

PN1086

And do you say 24 February the claim is withdrawn by Linfox Armaguard, Mr  
Fernandez?---Yes, yes.

PN1087

But are these your notes?---Yes.

PN1088

And it says, 'However, TWU want wordings be rewritten so that there can be no  
claim in the future of companies stating they don't have to pay it'. I can't make out  
the next row because it says, 'Claim withdrawn, however',?---'Waiting to be  
reviewed TWU for wording.'

PN1089

Let's put 'Wording' I guess 'To company' and 'company' is to (indistinct)  
something?---Yes, it's cut off on mine, as well.

PN1090

Okay. That's March. And that's where it finishes, is it?---Yes.

PN1091

All right. But that's - - -?---That's all the - - -

PN1092

That's very helpful, parties, to give a chronology of that item?---Yes, it's all the records I was – had from my previous employment.

PN1093

But you'd have the spreadsheet, wouldn't you?---Yes, I do.

PN1094

Just that it's been cut off – it'd be useful to get that last column. If you can perhaps find a way?---Yes, sure. I can provide it to the TWU.

PN1095

Thank you.

PN1096

MR WILLIAMS: All right. So in your statement, you have recalled a meeting on 3 February and you're suggestion is that Armaguard withdrew the claim for the table, at the meeting on 24 February as at paragraph 7 of your statement?---Yes, I believe so.

PN1097

Yes. So Linfox Armaguard withdraws its claim to say nothing. And you agree and perhaps it is at that meeting in 24 February to go away and draft a clause which to use your words, will clear up any ambiguity? Is that right?---I believe so, yes.

PN1098

Yes. So you're suggesting that the meeting in February if that's when it was, 24 February, Linfox Armaguard, through John O'Brien, not only agreed to withdraw the claim that the lunch in truck benefit be worth nothing, but in fact agreed to pay it in an unqualified way forever or sorry, not forever, in all circumstances?---No, we – we had to suggest the wording to him which we did and then there's an exchange of emails that went through, but eventually, yes, it was agreed.

PN1099

Well, let's have a look at your email – we have already had a bit of a look at it. Your email of 2 March? So you asked to be provided an amended clause on review that the proposed clause would clear up any ambiguity, but apart from everything else, the Commissioner asked you some questions about this. You still have the qualify for security reasons, all right?---Those words are still there. Yes.

PN1100

Yes. So it hardly seems likely that the agreement, sorry, that there was agreement at that point. That Linfox Armaguard would just pay it, irrespective of security reasons?---Well, I suppose the removal of the requirement to stay in the truck was



the focus of the discussion and otherwise the removal of that direction in agreeing to that is redundant.

PN1101

Well, I 100 per cent agree with you, Mr Fernandez. The focus of your discussion was and was on the requirement to remain in the truck. And when you left security reasons in the clause in your 2 March 2016 clause, that's what you were referring to, wasn't it?---What was I referring to?

PN1102

I will say it again, you said, and I agree with you that the focus of all of the discussions had been about the requirement to spend time in the truck, unsurprisingly, because that's the way the clause worked. And it was referred to explicitly in the 2015 agreement as the security reason, so when you went away and drafted the clause to clear up any ambiguity and you brought it back with the qualify security reason still there, that was plainly a reference to the requirement to eat lunch on the truck or spend some time on the truck during the lunch break. How could it be anything else?---Well, I don't agree. I was just using the language that was existing and I – as you can see through the evolution of the clause is that there were changes of the location whether it was in, whether it was out and again the reference for security reasons in my mind, when I was drafting the clause was about the situations of which the fellas were explaining to me on their duty and their requirement to remain vigilant while at work, and there was a payment in recognition of that inconvenience on their – on their – what otherwise would be an unpaid break.

PN1103

Well, I understand your evidence about that?

PN1104

THE COMMISSIONER: Mr Fernandez, whose document is this TF1? Is that shared or yours?---It was – it was mine. I kept – I kept it. It was circulated amongst our delegates and Mr Williams and Mr Fund I believe.

PN1105

So TWU exclusive, it wasn't shared with the employer?---No, I don't – look, again, I - - -

PN1106

Just so you have to explain it when you say that?---Whether a hard copy was given to Mr Smit or whatnot during the course of a negotiation, I couldn't you know, I do recollect we have some printed copies. We were keeping them on the table whether or not - - -

PN1107

Okay, but you didn't share it with the employer?---They weren't – they weren't – no, I – I don't believe so. We – we had some trouble with the minutes and the accuracy of the minutes and that's why I started keeping this document.

PN1108

Okay. Thank you.

PN1109

MR WILLIAMS: I will just take you to another document which we have spent a little bit of time discussing. It's over a couple of pages and it's the document which is a marked up version of your 2 March clause?---On what page?

PN1110

It's the part of KS5. Just before – it's the last, in fact the last page of KS5. I will just get the digital court book number. 172?---172.

PN1111

I am just trying got come to grips with how the negotiation went and maybe we will never really get to the bottom of it. But what seems least clear is that the clause that you sent on 2 March is not regarded as the last word on the topic. Would that be fair, at least?---On 2 March? Yes.

PN1112

Yes. So there was a meeting to discuss it and then if this clause, this document can be believed, at first he says, 'This clause was provided by Troy Fernandez on 2 March 2016', that seems right, doesn't it, that was the draft that people were working from?---I believe so.

PN1113

Your original one. Then it says, 'Red is the changes made by TWU prior to the meeting 3 March 2016', but it also says, 'Green changes made by TWU during meeting on 3 March 2016.' So can we take it and tell me if you don't recall, but can we take it that it's likely that any amendments made in green were made by you?---I don't recall, Mr Williams.

PN1114

But if that's true and I think the Commissioner asked you a question about that as well, then it does appear that somebody at this point has tried to take out the qualifier 'for security reasons', and actually put the clause up in the primary clause, so as a direct qualifier to the basic rule of an unpaid meal break. And I'm just taking that from what I'm reading; I don't know any more than that?---I - look, this is an Armaguard document. I can't - you know, I - I'm not sure, and I don't recollect the specifics of who spoke - - -

PN1115

All right?--- - - - to what at this particular meeting.

PN1116

Could we take it, at least, that there has been a discussion where the possibility of removing the words - the qualifier 'for security reasons' was discussed, but that, as we now know, that qualifier does appear in the final clause?---There's a possibility it was discussed.

PN1117

Well, but - and I don't mean to be unfair, but you simply can't recall?---Well, that's what I said before, Mr Williams. I just - - -

PN1118

Yes?---I just don't recall the specifics of the conversation on that day in 2016.

PN1119

But the safest presumption would be that there was some back and forth - which I think you may have said - some back and forth about the clause - - -?---Yes.

PN1120

- - - but that - in which the qualifier 'for security reasons' may have been discussed, but what we know is that, at the end of the day, it stayed in?---We know it stayed in.

PN1121

Yes?---Yes.

PN1122

Okay. And I've - you've also asked some questions in relation to KS6, which is - it might be - it's two pages over. 176. Now, look, Mr Fernandez, it's very unfair to ask you to comment on somebody else's email. But it is an available inference that Mr O'Brien didn't think that your clause changed anything at all. At least, he didn't think so?---Well, I'm not going to speculate on - - -

PN1123

No, I understand that?--- - - - someone else's email.

PN1124

I appreciate that, but it's part of the commission record. I just say, this is the proposition I really need to put to you. If - would you accept that if Mr O'Brien, on behalf of his employer, Linfox Armaguard, had agreed to a fundamentally different clause, then he might have been expected to explain that to his fellow executives at some point?---Well, I don't know what the Armaguard processes are. But I do know that Mr O'Brien was, as you - the words you used before, I think, was 'expert advice' - from Ms Kate, who was the - I can't remember Kate's last name, but she was the HR - - -

PN1125

Kate Greig?---Kate Greig, who's the HR person on behalf of the company. And, look, I - as I have previously stated, the payment would remain the same; the qualifier clearly changed. It clearly changed by agreement of the company, and it is - the purpose was to keep the custom and practice, which was the payment for that 15 minutes, that had occurred for a long period of time.

PN1126

You don't think an executive in Mr O'Brien's position, if he had in fact agreed to that, to a change to a very longstanding clause, might have communicated that change to his executives, and called it out as a change that needed to be considered?---Well - - -

PN1127

But he just failed to do that, and you can't explain why?---I can't explain - I cannot - sorry. I don't think that I should speculate on what Mr O'Brien's processes were.

PN1128

All right. Did he ever tell you - say anything to you - 'Well, look, Mr Fernandez, I'm okay with that, but I will obviously have to consult, and get some authority'? Did he ever say that?---He often said that he needed to run it past Kate.

PN1129

All right. Did he say - and, obviously, I wasn't there, so I'm speculating in relation to words, but to the effect - 'Mr Fernandez, if I'm to agree to that, I really need to get some advice as to whether the company will agree to an unqualified paid meal break'?---Well, he certainly didn't say that.

PN1130

But that would be a pretty common discussion, in circumstances where you're agreeing between you, in principle, to change a fundamental trigger point for a benefit?---Well, Mr O'Brien didn't say that 'I have to go and get some advice about if I'm going to change that clause', other than from Ms Greig.

PN1131

Okay. You're not aware that Ms Greig herself ever agreed to - in your presence - agreed to change the basic nature of the clause? Do you ever remember she herself saying, 'Yeah, it's fine', or, 'We're good with that', or, 'Linfox Armaguard agrees to that'? She was at the meetings, wasn't she?---Some of them. She was - sometimes she was remote, from my recollection.

PN1132

Can I show you a document - once again, it's not your document - annexure KS8, at page two hundred - commences at page 203. So what - this appears to be an email from Kate Greig to John O'Brien, and you're not copied, but there's a document attached to it. It's the document which is - appears to - well, presumably the flyer referred to in the email. But it says 'Queensland Road Crew enterprise bargaining update'?---Yes.

PN1133

Do you remember an update along these lines? I appreciate, that's maybe an unfair question, but I should ask it?---I think - yes, I think they put this out - - -

PN1134

Okay?--- - - - from recollection.

PN1135

So, when you say you put it out, they put it out, do you mean, or - - -?---They - this is their document, not - - -

PN1136

No, I know it's not your document?---Yes. Yes.

PN1137

But there's a - it's - appears to be designed to be the company's communication to employees as to where they're up to?---Yes.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1138

On some issues. And you see, in the right hand there, it says, 'The proposed efficiencies are as follows.' There's something about voluntary long day short week, and then 'lunch in truck' payable at 100 per cent rather than 150 per cent. So would you agree that - firstly - that the issue of the 'lunch in truck' benefit is still under negotiation at this point?---Where are you referring to, Mr Williams?

PN1139

All right. It's under the heading 'Queensland Road Crew enterprise bargaining update', and then it's on the right-hand side, immediately below that - below that heading. Page seems to be split in two. It says, 'The proposed efficiencies are as follows', and a couple of dot points?---Yes.

PN1140

So does it appear from that, and also from your recollection, that, now that Kate Greig is managing the negotiation, there was an ongoing discussion about 'lunch in truck'? Specifically about the rate payable?---Yes, that's 31 March. From the only notes that I had, it was still - yes, we were still talking about wording. So, potentially, yes.

PN1141

Yes. But you remember yourself, don't you, that there was a - it moved on to a discussion about the rate? Both metropolitan and country, and they had different outcomes, but there was a discussion about rate in both negotiations, wasn't there?---Yes.

PN1142

Yes. So, if that's right, then it can't be the case that you and John had essentially shaken hands on a deal back in - 2 March 2020 - 2016?---Well, I've never asserted that that was the case.

PN1143

Well, I thought you really had?---Okay, well - - -

PN1144

I thought you really had?---Well, Mr Williams, I have clearly said that there has been some back and forth along there, but we have - and then you made an assertion that Mr O'Brien was a pushover, and I disagreed with that. And we had a conversation about, there was an ongoing discussion.

PN1145

Yes. It appears, including in relation to the rate?---Well, the final outcome with - there was country - the country agreement had a lowering rate, over a - a staggered lowered rate over the life of the agreement. So that would indicate that there was a discussion about the rate.

PN1146

Including in the metropolitan agreement, though, even though it came to a different result?---Yes, but I don't know whether that was being entertained or not. I can't - but yes.

PN1147

Well, okay. I might come to that. I just make the point that I - to the extent - well, maybe you weren't intending to say this, but I had rather thought that what you were saying was that you and Mr O'Brien had really reached a compact that whatever the custom in place - custom and practice was before, it wouldn't change. And this - - -?---We eventually did, yes.

PN1148

But this suggests that, after Mr O'Brien's departure, Linfox Armaguard is still negotiating the 'lunch in truck', and still calling it 'lunch in truck', I might say?---So this is 31 March - - -

PN1149

Yes?--- - - - 2016, and Mr O'Brien left in June or July, didn't he?

PN1150

I thought he might have stepped out before that, but perhaps you're right. But this is a Kate Greig email, although John O'Brien is still involved, obviously?---So how could - - -

PN1151

But the only point - - -?---How could he have - - -

PN1152

- - - I wanted to make was that - - -?---How could he have left?

PN1153

The only - well, the point I wanted to make was that Linfox Armaguard was still negotiating the 'lunch in truck' issue at the end of March, so it can't have been resolved to finality between you and Mr O'Brien before that?---Yes, I - my notes show that, and so do some of the emails.

PN1154

Yes. So whatever the custom and practice was before the 2016 enterprise agreement, you and Mr O'Brien hadn't agreed to preserve that, untouched?---We eventually did, yes.

PN1155

Well, but not - you say that, but certainly that wasn't the case in - at the end of March, when Ms Greig is involved?---Well, but I thought we discussed that with the emails.

PN1156

And the emails say what - they say what they say. And do you also notice that there's a link to the wage proposal, that if these efficiencies are agreed, then

Linfox has a wage proposal? Year 1, 3.2 per cent; year 2 and 3, 3.1 per cent?---Yes, that was 172 again, wasn't it, sorry?

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1157

I'm sorry?---I've flipped, because I was trying to keep up with the different references of timelines. Sorry; were you - the - what page were we, again, with the Armaguard document, Mr Smit's - - -

PN1158

I think it's 2015, I think?---205. Yes, all right.

PN1159

It's the document which we were talking about before, the update - the bargaining update, attached to Ms Greig's email of 31 March?---Is this the metropolitan agreement, or is it the country agreement.

PN1160

I think it's metropolitan?---It doesn't say.

PN1161

No, that is true. We will move on, because I appreciate that that doesn't definitively say one way or another, but I think you had agreed to me that there was discussion about the rate, including in the metropolitan negotiations?---Yes, there was.

PN1162

Yes, okay. So KS11, which is 260 – sorry, 216 – actually, I'm sorry, Mr Fernandez. I notice that that appears to be exclusively in relation to the country enterprise agreement, so I won't trouble you with that one?---Excuse me, Commissioner – may I grab some water?

PN1163

THE COMMISSIONER: Of course, yes?---Thank you so much.

PN1164

At 292 Kate Greig finishes up during the third, 2016.

PN1165

MR WILLIAMS: Yes, I think Mr (indistinct) was out of the role before then?---As I said, two or three weeks before that, I think.

PN1166

Maybe you can help me with this, because I genuinely don't know the answer, but if we look at annexure KS12 – I'll get you a book reference – 216. Is this email exchange between you and Mr O'Brien – I notice you're still there in April – is this in relation to metro or country, if you know, if you can recall?---I mean, I can't be 100 per cent but I would suggest perhaps it is country because it looks to be where we ended on the country agreement but I just – I can't - - -

PN1167

THE COMMISSIONER: There's also reference to a meeting on 7 March, presumably with the country delegates, whereas metro was 3 March, wasn't it?

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1168

MR WILLIAMS: Unfortunately, Commissioner, it must be obvious to you now that the record's not perfect.

PN1169

THE COMMISSIONER: No, but what happens? We've got Mr O'Brien leaving, say, sometime in late May, then Ms Greig on 3 June.

PN1170

MR WILLIAMS: Yes.

PN1171

THE COMMISSIONER: Who becomes the keeper of the documents?

PN1172

MR WILLIAMS: I might come to that now because there's some significance to that. Mr Fernandez happily seems to have lasted the distance but several changes - - -?---On both sides, right? I was dealing with Mr Smit for a while there and I don't know if Mr Jordan was involved for a little bit.

PN1173

Mr who, sorry?---David Jordan.

PN1174

I don't recall that name?---But there was a whole change of – there was a whole change in there, on their side, as what happened to us at the beginning of the negotiations. We had a whole change on our side, (indistinct). It's a bit disjointed.

PN1175

Well, can I just in conclusion, I think – this is going to be the last thing I want to trouble you with – annexure KS15 of the witness statement of Kobie Smit. I can give you a reference – 291. Let me know when you've got there?---I'm here.

PN1176

Okay, so this is an email from Kate Greig on 3 June. I'll take her last lines at face value. So this is her last day at Armaguard and she sent you drafts of both – as I said – both the enterprise agreements. It says up the top, subject: 'Armaguard Queensland road crew draft', but it appears to me that there's one for each. There's a metropolitan one and there's a country one. The first one appears to be the country one. It appears that there's some commonality of clauses. As you'll see on the first page of the email, she says: 'Clause 32 revised – LIT or lunch in truck driver'. Do you see that, just going back to the email?---Yes.

PN1177

So we track past the country enterprise agreement draft. Then we get to the metropolitan road crew enterprise agreement 2016 draft. I will see if I can get you



a court book reference but I wanted to take you to clause 32, which is on page 35 of the metropolitan draft.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1178

THE COMMISSIONER: So 389.

PN1179

MR WILLIAMS: Thank you, Commissioner, I'm grateful. If I could just make the suggestion to you that the draft which had been provided to you on 3 June 2016 was essentially unchanged in the metropolitan agreement in relation to meal breaks, from the 2015 agreement?---Well, yes.

PN1180

Yes?---But I don't know whether she has omitted - - -

PN1181

We can go to this if you want to. But the same clause in the country agreement has the step down. That's at page 36 of the country draft.

PN1182

THE COMMISSIONER: Page 329.

PN1183

MR WILLIAMS: Page 329.

PN1184

THE COMMISSIONER: It still has the direction requirement.

PN1185

MR WILLIAMS: That draft still has the direction requirement, that's right. But it also has the step down, whereas the metropolitan draft did not have the step down. It also had the same – pretty much the same clause, I think, as the 2015 agreement.

PN1186

THE COMMISSIONER: It's exactly the same.

PN1187

MR WILLIAMS: Exactly the same – you see that? I'll just take it one step at a time. So, Mr Fernandez, I'm trying to understand the unsatisfactory record and accepting the possibility that Kate Greig might have been mistaken or poorly briefed, that suggests that her understanding at the time was that there was no concluded agreement to change the rules in relation to lunch in truck in the metropolitan negotiations? That wasn't her state of mind?---Mr Williams, when you mark up a document, there's normally a lot of lines on them and there are things that would show formatting and bolding and all of those sorts of things. When you look at these documents that are provided in Mr Smit's statement here they don't seem to have any of those things.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1188

Well, Mr Fernandez, can I make a proposal for you then: I don't know the answer to your question but I'm pretty sure I could find out overnight. Noting the time and noting that I think I'm probably unlikely to finish with you tonight anyway, would it be of assistance to you if I get the metadata, if there is any, and bring it to the Commission tomorrow so you can have a proper look at it? It's a pretty important point?---This one has one.

PN1189

THE COMMISSIONER: Can I assist, parties? All right, we know that Kate Greig sent you some clean copies, Mr Fernandez?---Is that what – have I gone past the right page, then?

PN1190

Hang on, just listen to me: on 3 June Kate Greig sent you some clean copies of metro and country. Then at page 421, you sent an email to Pearl and Dane - - - ?---Four-two-one, did you say?

PN1191

Yes.

PN1192

MR WILLIAMS: I was certainly going to come to that, Commissioner. I juts didn't want to take Mr Fernandez past this document if he was interested in seeing the metadata.

PN1193

THE COMMISSIONER: I just want to help with some (indistinct). Then on 13 June you write to Pearl and copy in Dane and some others and you say: 'Here's some errors', and then you point out that – on the second page at 419 – you say, 'This is the clause that we agreed on 22 March'?---Hm.

PN1194

And then Pearl comes back to you on the 16th and says, 'Can you please provide me with a copy of the minutes that confirm the agreement, the red highlighted amendments'? You go: 'I can provide you with company minutes as we simply didn't get any from Kate. I can provide you with emails if John can propose (indistinct)'. And then Pearl on 17 June says: 'Subsequent to our phone call, Dane has located some meeting notes from John that seem to indicate an in-principle agreement to your proposed wording for clause 32.1.4 for the metro agreement so in good faith I have included that wording. Dane may verify this with John on Monday and come back to you'. So that's what's happening in mid-June. Kate and John no longer are in the business?---That's right.

PN1195

So other people are dealing with what, Mr Fernandez, you think was agreed?---Yes, and I – like I said, I've supplied those – as you have read I supplied those to Ms Thompson. You know, she was at liberty to say, 'Well, we don't believe there is an in-principle agreement', or not. But she obviously responds with, 'There is'.

PN1196

Thank you.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1197

MR WILLIAMS: I'll keep going. Mr Fernandez, if you do want us to have a look at metadata overnight, we - - -?---No, no, I just – I was struggling to understand the document that was in front of me because I'm like, 'Why doesn't it have all the markups on it'.

PN1198

Yes?---And then I obviously have not read the fullness of everything that's here.

PN1199

Yes?---And there was an exchange of emails that occurred after that that would explain – which explains what's happened with that document.

PN1200

So you're happy to proceed?---Yes.

PN1201

Well, let's go to that now because that was the question I wanted to ask you. So Kate Greig sent you drafts which show no change in the metropolitan lunch break clause?---Mm-hm.

PN1202

As I read the trail from there, a couple of pages over – sorry. Annexure KF16, 421, which is the email the Commissioner took you to – page 421?---Mm-hm.

PN1203

So the email trail starts with Pearl Thompson's email of 17 June. If we go over a couple of pages, four or five pages over, you've responded to Kate's email on 6 June 2016: 'While we are getting the feedback to the draft EBAs provided' – you see that? That's the first response.

PN1204

THE COMMISSIONER: Four-twenty.

PN1205

MR WILLIAMS: Four-twenty, sorry, Commissioner – I'll be more efficient. Was it 420? Does that make sense, Mr Fernandez?---Yes.

PN1206

So at that point it was pretty clear you hadn't read into the drafts deeply but by your email of 13 June, which is back a page, or two pages – that would be 418, I assume?---Yes.

PN1207

You have read into it, and you point out some errors, and one of those errors you point out is - or as you put it, you say, clause 32.2, 'This was not the agreed

clause. I sent the following to John on 2 March, and it was agreed around 22 March'. See that?---Mm-hm.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1208

And what's below that is - what seems to be precisely the first clause that you have drafted. It seems to be a replication as you say in the email, I think - no, sorry. You don't say it in the email, but it seems to be a replication of the clause that you provided on 2 March, the very first one. So with all - whatever toing and froing or backing and forthing, that's what you felt had been the end point?---Correct.

PN1209

Yes. And, of course, it had the qualification in relation to security reasons back in?---Correct.

PN1210

Yes. So the question I just want to ask you is this, Mr Fernandez: You knew you were dealing with a new negotiator?---Yes.

PN1211

You knew at least - you knew that they - the - Kate Greig herself may not have been fully informed as to the course of the negotiation because she'd sent you a clause unchanged?---Well, I - I knew that there were some errors. I didn't know whether it was from being uninformed, or whether it was that she was on her way out the door, and she didn't care anymore, or that there was, you know - deliberately leaving things out. I don't know what her motivation was.

PN1212

But you're now dealing with Pearly who's yet another new face?---Yes.

PN1213

You say that it's not the agreed wording, and you provide what you say is the agreed wording?---Yes.

PN1214

On 17 June, Pearl Thompson says to you - or, sorry, first is she asked you for minutes. There are none. You said - you've offered to send the email. Pearl says to you on 17 June, 'Dane has located some meetings notes from John that seems to indicate an in principle agreement to your proposed wording for clause 32.1.4 for the Metro agreement. So in good faith, I've included that wording'. You see that? Whereas you're - sorry, you're with me?---Sorry. It was - which page was the - was Pearl's - - -

PN1215

Four-twenty-one?---Four-twenty-one.

PN1216

Sorry. Four-sixteen, is it? I'm sorry. It is 416. What have I got written down? Pearl Thompson's email of 17 June 2016. It's part - it's the first page in K16?---Okay. Yes.

PN1217

So I suppose the point is this, Mr Fernandez, you were dealing with a brand new negotiator who's unguardedly told you or made it obvious that she doesn't have a handover and doesn't even really seem to have a follow up, who's saying in good faith she's going to accept your proposed wording which, on your view of the world, was a fundamentally different benefit to what had applied in the 2015 agreement and fundamentally different to the clause which Kate Greig put in the draft 2016 agreement earlier in June. That's the situation you were facing, wasn't it?--Well, there's a few things to unpack in that statement. One is that you said that I knew that she inadvertently didn't have a handover. I didn't know what notes she does - or records that she did or didn't have access to. She asked me for the minutes from that meeting. I said to her that we, yes, didn't receive them, as the exchange shows. So I'm not going to deny that, but I was not going to presume that John didn't leave any records behind or Kate didn't leave any records behind, or they don't have some sort of system in the way they upload things as we did with our organisation. So I don't know what she did or didn't have. I did, however, offer to provide her what I had, and she was perfectly at liberty as a negotiator to accept that or not accept that, and she did.

PN1218

That's - up to a point, that's true, but this is a good faith - this is a negotiation covered by the good faith bargaining rules?---Correct.

PN1219

And I think you agreed with me that you can't be sneaky or tricky in a good faith bargaining negotiation, didn't you?--Well, as we've covered before, and you've, you know, implied, I agree that that is not the case and that I do not operate in that way, Mr Williams.

PN1220

And I'm sure that's correct?---I hope so.

PN1221

So if you had thought that months before, a previous negotiator had agreed in principle to a fundamental change of this important clause or this important benefit, you would have made sure that Pearl Thompson was aware of that, wouldn't you?--Well, I did make Ms Thompson aware of it.

PN1222

No, you didn't. You just sent her a copy of the clause which you said had been agreed with Mr O'Brien at an earlier point. You didn't go the step further and say, 'And just so we're all very clear, this is a very different clause to the one that Kate Greig sent me earlier in June, very different, because that qualification in relation to the requirement to spend - to take lunch in the truck is - no longer applies'. That's what you would have done?---I dealt with the company's representative at the time, and I had open discussions with the company representative to a point where I believe that we have an agreement. I - - -

PN1223

Well, why did you think that - - -?---The implication that I somehow then swindled Ms Thompson, I resent that.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1224

Well, I'm not - that's not a suggestion I'm making?---Well, I - - -

PN1225

The suggestion I'm making is that if you had truly been of the view that you had negotiated that fundamental change to the team, then you would have pointed that out to Ms Thompson, and you would have been very clear and upfront about it?---Ms Thompson had a lot of our - I assume that she had our log of claims. I assume that she had other records. I don't know what she did or do not have. I do not know the extent of her - of the handover, and I don't think I should speculate on that.

PN1226

Sorry. Mr Fernandez, isn't it as obvious as a pikestaff from Pearl Thompson's email of 17 June that she's got nothing?---Well, she doesn't have the minutes from that meeting.

PN1227

And didn't have the clause. Had to go looking for it. She says 'in good faith'. I've included that wording. Having a week or so previously - Kate Greig having sent to you an agreement which had the old clause in it. Don't you think you - if you had thought that you had truly negotiated such a fundamental change, you would have gone back to Pearl and said, 'Look, just to be clear, we all need to understand this. It's different'?---Mr Williams, there was - - -

PN1228

'Lunch in truck is not - it's not lunch in truck anymore'?---Mr Williams, there was a lot of moving pieces as well as, you know, changes in job security clauses and other claims, money. There was potential - there - I - from my recollection, I think the country guys were instructing me to start lodging protected action ballots. The records of which - and the diligence of which Armaguard kept their documentation I cannot speak to other than to say that I dealt with each person. I had face value with the knowledge that I had.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1229

See, Mr Fernandez, I trust you and believe you when you say that you approached your enterprise bargaining negotiations in good faith and with a degree of transparency even though they are, of course, adversarial negotiations, but accepting that, the situation is this, isn't it: You had agreed some changed wording in principle with Mr O'Brien, or at least you'd gone a long way to agreement. Mr O'Brien's now out of the picture. The purpose of those new wordings was not to change the benefit, but rather to clarify ambiguity because that's what you said it was to do. You never have for one moment at that time held a subjective view that you had fundamentally changed the benefit so that it was payable in all circumstances, and the meal break was always going to be paid,

and if you had, if that was truly what you thought you'd negotiated, you would have told Pearl Thompson and just made sure there was a proper meeting of minds because that's what good faith bargaining is. That's right, isn't it, Mr Fernandez?---The way you've represented that, Mr Williams, is not correct, but I would say that I have had a conversation with Mr O'Brien. We came to a in principle agreement on the matter. We understood at the conversations at the table that it was the case that we were preserving the payment that was already being paid and changing the qualifications for that payment so that it was being paid in all circumstances, and the changing of the negotiators through that process, you know - I - if I was to engage in bad faith bargaining, Mr Williams, I could have just said, well, they've - Armaguard agreed to a 13 per cent pay rise, but I - but there would be no records to support that, and there was a good chance that Armaguard would have records to my knowledge, through the big sophisticated organisation as Armaguard is, I would have had a reasonable expectation that they have - they, you know, a centralised record system.

PN1230

Well, see, I suggested to you once that this was pretty obvious from Pearl's email that's not the case, but do you seriously think that if you'd gone back to Pearl and said, 'Look, Pearl, I need to be clear. We've negotiated a different outcome. The meal break's paid now in all circumstances', that she - that that would have been the end of it. You don't think that, do you?---Mr Williams, your description of a fundamental change when the mindset of certainly what I understood to be a focus on costs did not change, and, so, fundamentally, the agreement did not change in terms of the cost to the employer. We changed the way a clause functioned and providing an entitlement, but there was not, as I have previously said, any sneaky or trickiness or any - as you, you know, so backhandedly implied that on a - not - not engaging in good faith bargaining, I have dealt - and I dealt with Mr Smit for quite a period of time afterwards as well, and I have - I had a great working relationship with him and a great deal of respect for Mr Smit as well. Mr Smit was a man I - as I dealt with him, he genuinely did what he said and said what he did, and I respected that. We didn't always agree on things, but I felt like he dealt with me in an honest way, and I believe that I dealt with him in an honest way and the same with John.

PN1231

And, Mr Fernandez, we're at cross-purposes. I may agree with you. I agree that back in 2016, you were discharging your obligations, and that's why you didn't feel you had to say anything to Pearl Thompson about there being such a fundamental change because there wasn't. There was no change. It was the same benefit. Same amount, same trigger, same qualifications related to security reasons?---Again, Mr Williams, the monetary entitlement that was paid to the employees did not change. The qualification for getting that monetary payment did change.

\*\*\* TROY FERNANDEZ

XXN MR WILLIAMS

PN1232

If that was the case - sorry, you finish?---And, so, I had the conversations with the representatives of the company at the time. We had open conversations. There were many people in the room. There would be an understanding of the cost

implications of all of these things. I then dealt with Ms Thompson and Mr Smit. After that, I dealt with them for both a long period of time, and as I have said on several occasions now that the entitlement - the way that the entitlement trigger worked changed, but the amount of money that was paid to the employees because of the longstanding customer practice did not change.

PN1233

Could the witness be shown Mr Hurndell's statement?

PN1234

THE COMMISSIONER: That's at page 56 of the court book?---Yes, thank you. You might – that's cut off too.

PN1235

MR WILLIAMS: So you have got Mr Hurndell's statement there?---Yes, I see Mr Hurndell's statement.

PN1236

Yes. And he was one of the delegates who was supporting you in the negotiations in 2016?---Yes, he was.

PN1237

He was. Could you go over to page 261 SH2? And Annexure SH2 is a couple of – sorry, it looks like a ballot document in relation to a ballot held 13 May 2016?---M'mm.

PN1238

It's been explained that the practise was that once the company made – Linfox Armaguard made a proposal that there was an informal ballot taken of the members as to whether it was supported or not and this was a ballot in relation to a proposal held on the 13 May 2016? Let me know if that seems right?---Yes. That appears to be what it is.

PN1239

Did you, yourself, draft these documents?---I don't think so.

PN1240

So - - -?---It could have been. I don't remember is probably the right answer.

PN1241

You're not sure – sorry - - -?---No. I can't recollect as to whether I did or didn't.

PN1242

But you do see that – I'm sorry – I should explain this as well. There appear to be two documents on the page but, in fact, there aren't. I should explain that it's from a page which put two identical forms on one page, presumably, for efficiency and then they should have cut them up and handed them out separately?---Right.

PN1243

Yes. So that you can ignore what's down the bottom. It's the same as what's up the top. But you see that it says, 'Lunch in truck. No change.'?---M'mm.



PN1244

Now, we have been told that this was a ballot paper which was accompanied with the proposal which was eventually accepted in May 2016?---M'mm.

PN1245

So it appears the members were told that there was no change to the lunch in truck benefit?---So, Mr Hurndell was a cash in transit employee of Armaguard and the delegate of our organisation. As you can see that this is not an explicitly detailed document. It is a short document with points about it.

PN1246

Well - - -?---It doesn't – in terms of when we were representing our members we were talking about whether there was a conversation of the removal of the payment and the members would still receive the payment so there's no change.

PN1247

Well, a bit more than that, Mr Fernandez, isn't it? Your assertion to the Commission is that you had negotiated not only no change to the amount but also a complete removal of a pretty important qualification?---Yes. There's no change to the amount. That's right. And there was a change to the qualification, that's right.

PN1248

Well, that would have been something that absolutely you would have told the members you'd done on nearly half if it was true. Wouldn't you?---It may have been verbally communicated. I can't recall.

PN1249

Lunch in truck. No change – capitalised, bold, underlined?---M'mm.

PN1250

Members would have been in no doubt that there was no change to that benefit. No change?---They would still be receiving it. That's right.

PN1251

And there would be no change to the benefit?---They'd still be receiving it. That's right.

PN1252

Yes. It is unthinkable, Mr Fernandez, whether you're involved in this document or not, that it is unthinkable that if you'd had the bargaining victory as you say you'd had with Mr O'Brien and with Linfox Armaguard that you would not have told the members about that. Because it would have been a matter of some (indistinct)?---Well, that's your assertion. I may have said it. I may have said it verbally at a meeting. I'm not sure, Mr Williams. I cannot recall.

PN1253

You said – no, you can't recall – because it didn't happen, did it? Because if you had - - -

PN1254

MR DALTON-BRIDGES: Objection.

PN1255

MR WILLIAMS: I'm allowed to put a proposition.

PN1256

THE COMMISSIONER: He's allowed to put the question. Thank you.

PN1257

MR WILLIAMS: It didn't happen, Mr Fernandez, because you hadn't negotiated any such thing. That's right, isn't it?---No, it's not, Mr Williams.

PN1258

THE COMMISSIONER: Do you think you locked it in? That it was impenetrable?---I thought – Commissioner, well, I've already sworn. So I believe that we locked in an existing table and removed the uncertainty for the members -  
- -

PN1259

Yes?---- - - about having to be directed or not directed. They were just going to get it either way.

PN1260

Yes?---Right?

PN1261

And what you were just being asked is wouldn't you be proud about that? Wouldn't you tell people?---And - - -

PN1262

Wouldn't you say, 'We've got this locked in for the life of this agreement.'?---Yes. And I can't – being an organiser of an area where I had some – 800 members in North Brisbane to Gympie. I have several yard meetings over several EBA meetings. The specifics of what I say at each one of those, at which occurred in 2016, I just can't honestly sit here and tell you, 'Yes. I absolutely trumpeted it or I had said nothing about it.' I probably did say something about it but I just – I honestly can't tell you that what I said.

PN1263

Okay.

PN1264

MR WILLIAMS: I don't have any further questions, Commissioner. Thank you.

PN1265

THE COMMISSIONER: Yes.

**RE-EXAMINATION BY MS DALTON-BRIDGES**

**[4.37 PM]**

PN1266

MR DALTON-BRIDGES: Mr Fernandez, I am loathe to keep you turning through what is a 10 year document but – page 174 if you could? If you go back to the point where we have been labouring for what seems like many, many hours. On page 174 this is an email from John O'Brien to Kate Greig. And it says we have agreed to the lunch and truck revision because it really doesn't give them anything. What's your understanding of what Mr O'Brien was saying?

PN1267

MR WILLIAMS: Well, this witness can't really answer the question. But, Commissioner, I make that point but I did ask. I also asked Mr Fernandez questions about it so I would be – I would have to accept it. Do you want to hear the answer to that question?

PN1268

THE COMMISSIONER: No. If you can assist at all but you're not Mr O'Brien?---No. I'm not Mr O'Brien. All I can reiterate is what I previously said if – you know – I – my understanding of the negotiations was that the payments stay the same and there was no change in the amount that was being paid. But, rather, the qualification of which it was being paid on.

PN1269

MR DALTON-BRIDGES: Okay. So, Mr Fernandez, on page 187 what's actually then agreed to by John O'Brien on page 174 is contained herein. Do we say that this has been an accurate record of what Mr O'Brien agreed to? And it's noted at the bottom, '16/3 agreed to clause above'. So I will ask again. Do we believe that this is what John O'Brien agreed to?

PN1270

THE COMMISSIONER: And page 184, you mean, Ms Dalton-Bridges?

PN1271

MR DALTON-BRIDGES: On 187, Commissioner?---Well, this is – you know –  
--

PN1272

THE COMMISSIONER: 184 is the claims tracker isn't it?

PN1273

MR DALTON-BRIDGES: Well, I have 187, Commissioner.

PN1274

THE COMMISSIONER: Are you looking at the claims tracker?

PN1275

MR WILLIAMS: I think 187 might be right.

PN1276

THE COMMISSIONER: The email says, 'Kate, updated tracker attached as well as the clauses pertaining.'

\*\*\* TROY FERNANDEZ

RXN MS DALTON-BRIDGES

PN1277

MR DALTON-BRIDGES: Yes.

PN1278

THE COMMISSIONER: Right?

PN1279

MR DALTON-BRIDGES: And the clauses contain, Commissioner, I would say on 187.

PN1280

THE COMMISSIONER: Right. We're never going to know. Whose email is this?

PN1281

MR DALTON-BRIDGES: Well, it's attached, Commissioner, to the previous. You will see it follows the same - - -

PN1282

THE COMMISSIONER: Mr Smit. Mr Smit has had access to this email has he? He will be able to tell us how many. We have got the claims tracker and we have got the job security clause and the TWU meal break clause. Okay. So that's what you say is it 187.

PN1283

MR DALTON-BRIDGES: Yes. So we say 187 - - -

PN1284

THE COMMISSIONER: All right. Thank you.

PN1285

MR DALTON-BRIDGES: - - -is the agreed clause. And 16/3 is the date of which Mr O'Brien says that he agrees to the clause above. Do we agree, Mr Fernandez, that that is what was agreed to by Mr O'Brien?---This is their document, but yes, I agree that this is where we got to in the course of the back and forward.

PN1286

So, therefore, Ms Greig was totally across what had been agreed to by Mr O'Brien, wasn't she?---Well, I was understanding that she was being briefed by him.

PN1287

So when we're talking about 'good faith' Ms Greig knew completely because she had been instructed clearly by Mr O'Brien by email?---Well, this is their email. So that would appear to be the case.

\*\*\* TROY FERNANDEZ

RXN MS DALTON-BRIDGES

PN1288

And Mr O'Brien clearly says, 'Kate, updated tracker attached as well as clauses pertaining to job security and LIT.' So that would seem to indicate that he's told

her very clearly this is what the clauses are. So, perhaps Ms Greig's ability to keep a record mightn't have been for whatever reason as we would have expected.

PN1289

MR WILLIAMS: Well, I object to the - - -

PN1290

THE COMMISSIONER: He doesn't know.

PN1291

MR WILLIAMS: - - -submissions being made in re-examination as accurate as it may be.

PN1292

THE COMMISSIONER: Mr Fernandez, do you accept that – I think you've said before – that the clause at 187 isn't the final clause?---Yes, well - - -

PN1293

That you propose in June – right?---Yes. This is clearly not - - -

PN1294

There's a small change?---- - -where – yes, because there's a small change.

PN1295

Yes?---And clearly not where it lands in the document itself. But - - -

PN1296

Why did you do that then? Why didn't you give them back your 16 March draft?---I don't know that I have seen this document though. Like this is the point. Like I am not – I'm not sure that I was supplied with this. This is their notes.

PN1297

Right. Because again – sorry, their notes at 184 – the tracker. It says remove LIT and the last one is 16/3 revise the clause agreed to. And you think that's Mr O'Brien's workings at 187 for which - - -?---Well - - -

PN1298

- - -he's marking it up?---Yes. So I don't know whether – this document would suggest that we have had a conversation at the bargaining table.

PN1299

Yes?---They believe that they had recorded it in this manner. But then this never came back to me.

PN1300

Okay?---So I don't – well, I don't believe that this ever came back to me. I don't have a record of that as far as I am aware. So I understood that we got to an agreed place.

\*\*\* TROY FERNANDEZ

RXN MS DALTON-BRIDGES

PN1301

Right. Okay, thanks, Ms Dalton-Bridges.

PN1302

MR DALTON-BRIDGES: So when we talk and Mr Williams referred several times to absolutely the status quo that there was just an agreement to status quo of what had been in the 2015 agreement. What do you say to that, Mr Fernandez?---Are you talking about status quo in terms of - - -

PN1303

Of the entitlement as it was written in the 2015 agreement. Was there a status quo? Was there a change?---Yes. So there's the preserved custom and practise. Is that what you're talking about?

PN1304

Well, was there a change? From 2015 to 2016? Was there any change in the entitlement?---The - - -

PN1305

THE COMMISSIONER: It's not a difficult question?---Yes. Well, from 2015 to 2016 the entitlement changed because it was decoupled so it had a – it didn't have that qualifier any more.

PN1306

So there it's not status quo, is there? There is a change?---There is a change, but not in terms of the payment.

PN1307

No. So – and I think that's what's happened time and time again. We keep talking status quo even when Mr Hurdell's statement is brought forward and people keep focussing on the money is the same. Could you give us a view about that, Mr Fernandez?---Yes. So there was a heavy focus from Armaguard about their budge and their declining use of cash. And concerns about costs. There was talks – there was all sorts of talks about efficiencies, long days, short weeks, the removal of lunch in truck altogether, the – this and that and the other.

PN1308

When we talk about it, our guys are truck drivers. And we talk about in preserving the money that they're getting paid and they're taking home and what they receive doing their work. That's what we were talking about. So the status quo in terms of that remains. But the protection of the entitlements so to speak was changed to ensure that at least for the term of – for the life of an enterprise agreement it couldn't be removed.

PN1309

And Mr O'Brien clearly agreed to that, we believed in – as of 16 March 2016. Is that correct, Mr Fernandez?---Is the – sorry, the dates are it was 16/03?

\*\*\* TROY FERNANDEZ

RXN MS DALTON-BRIDGES

PN1310

Yes, 16 March?---So my notes don't go that far, but the notes that have come from the Armaguard documents suggest that the clause was agreed.

PN1311

Okay. All right. Just to some earlier work and I won't be very long. Is it fair to say Mr Fernandez that in agreements, often you will have clauses that replicate clauses that are in awards?---Yes.

PN1312

Yes. And on top of that is it reasonable to say as part of negotiations that then clauses can be added into agreements on top of those clauses?---Yes.

PN1313

Yes. And did that happen in this occasion?---Yes.

PN1314

Okay. And we understood that we had agreement with the respondent with the employer on this occasion?---Yes.

PN1315

Yes. When Mr Williams earlier talked about being out of the truck is a benefit, when our employee – when our (indistinct) talk about concerns, safety concerns, when are those safety concerns in those – in their minds? When do they occur?---Just – just being out of the truck or being out of the truck on a break?

PN1316

Okay. So being out of the truck?---So there can be again, I have never been a cash in transit officer, so the things that are – have been relayed to me by delegates and members are things such as when carrying a consignment, being robbed when going to the toilet and having your gun belt off, having somebody come in and take the gun belt. Going into any open area and having people behind you. That can be a security risk. There can be a plethora of different circumstances to which the guys feel unsafe. If they were any Armaguard Uniform, they know that people identify that with – with money and precious goods. They know that they're carrying a gun. All of those things is why they are a high risk job and yes, I think that they understand that they are always got to be vigilant for those security concerns.

PN1317

So those risks occur when they are out of the truck, is that fair to say, Mr Fernandez?---It is more likely that it happens outside of the truck. Absolutely.

\*\*\* TROY FERNANDEZ

RXN MS DALTON-BRIDGES

PN1318

So when they're on an unpaid break out of the truck, Mr Fernandez, how would you describe what has to occur in order for them to maintain their safety?---So what's been told to me is that the vehicle needs to be secured. They are unable to de-gun themselves because they are – there's no gun box within the vehicle and the drop safe, once they drop the gun down the drop safe it's too – they don't have access to it, because they're – the only key to it is back at the depot. So there's no secure place for that to go. Then when they're out of the vehicle, it's better – some

of them have told me that it's better that they go together, so if one of them is carrying drinks or food or whatever, and somebody goes for one of their guns or them, that the other guy is there to be able to protect them. Some guys have told me that you know, just the simple – simple ability to be able to you know, sit in a park bench and close your eyes, going into a licensed venue if they want to have a counter meal. All of those things they are a concern about people around them and behind them and who can see them and all of those sorts of things. So those are security concerns that some of them have raised with me and yes, that's being outside of the truck.

PN1319

Did that information affect you when you were drafting the clause?---Yes. Look, I – it never – you know the origin of – for security reasons being about the consignment and not the employee, frankly, like, it has never – I just couldn't believe that. That we would have a commission and an award that is about people's paying conditions that is all about the consignment and not about the employee. So yes, it did affect me.

PN1320

Thank you, Mr Fernandez. And last but not least, in terms of the clause, is it your understanding that the same clause was stayed in the agreement for 2019 and 2022 when there has been opportunity to change the clause?---I haven't seen the 2022 agreement because I finished work at the Transport Workers Union in 2021. So I can't speak to that. But since it went in at 2016, it stayed in 2019 and it was there until I left in 2021.

PN1321

Thank you, Mr Fernandez.

PN1322

THE COMMISSIONER: Do you have a copy of the Award Clause in front of you?---I do.

PN1323

So 15.2(a) contemplates where an employer directs an employee for security reasons to take part of their break in the truck and then (b) the duration of a meal break must be one hour to enable all members of the vehicle's crew to have some portion of their meal break outside the vehicle if they desire. So the award contemplates if the employer doesn't want the employee to have all of their meal break in the vehicle, then people can go and get fresh air or do whatever they need to do. They're equally as unsafe aren't they? Under the award? Than they would be under the agreement?---Well, yes. That's a – absolutely. But the question I suppose is that – are you saying that you have security reasons that you need to stay in the vehicle for example, for – to eat while you have got both of your hands full and then allow somebody to go out and have some fresh air afterwards? Like, it – is the security reason because there's something outside? If the security reason was because as Mr Williams has asserted, is to protect the consignment inside, I just - - -

\*\*\* TROY FERNANDEZ

RXN MS DALTON-BRIDGES



PN1324

Well, we don't know now because employees don't have to sit in the truck. They can do whatever they please in their half hour?---Well - - -

PN1325

Within reason of course?---Yes, within – I mean, they still have a bunch of restrictions even on their break now. Whether it's paid or unpaid.

PN1326

Yes, but the award itself contemplates if there's a reason then the employee is welcome, invited to spend some of that portion outside of the vehicle where the same risks apply, don't they to these drivers?---Outside of the vehicle?

PN1327

Yes?---Yes.

PN1328

And if this isn't an award that's been made by the Commission, that the TWU has been long party to?---Yes.

PN1329

And contemplates that if people go outside of the vehicle, there's going to be some element of risk?---Risk. Yes.

PN1330

There need not be a complete protection for their meal break? Any mingling with the public comes with some risk?---Yes. And I agree with that view, which is why there's an above award condition that was paid, you know, in a sort of customer practice type way and then we tried to codify, so to compensate people for that risk in the same way that you know, danger pay or whatnot - - -

PN1331

But the bare award provides for unpaid – some portion of unpaid meal break outside of the vehicle?---Yes. Yes. And so does the agreement. But the agreement provides for an above award payment on top of that.

PN1332

Yes?---I mean, isn't it - - -

PN1333

But which did have a qualifier which wasn't enforced and now remanded with this wording. Well, that's the extent of my questions. Anything arising out of that?

PN1334

MR WILLIAMS: No, thank you, Commissioner.

PN1335

THE COMMISSIONER: Anything arising?

\*\*\* TROY FERNANDEZ

RXN MS DALTON-BRIDGES

PN1336

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

PN1337

THE COMMISSIONER: All right. Then, thanks, Mr Fernandez for giving evidence. You're exchanged?---Thank you very much, Commissioner.

<THE WITNESS WITHDREW

[4.57 PM]

PN1338

MR WILLIAMS: Commissioner, I am presuming it's a convenient time. We do need to discuss the issue of (indistinct) submissions. The way I see it is this. There's one more TWU Witness. Mr Wilkinson. He will be a little while. Not as long as this, but a little while. And then I have got five witnesses, so it seems to me to be almost impossible – quite unlikely that we will finish in time to do the full oral submissions tomorrow. And then we have some risk of not finishing up the evidence.

PN1339

THE COMMISSIONER: Are all of your witnesses in person tomorrow?

PN1340

MR WILLIAMS: No, two of them are in person and three of them are on video. Your Associate's been advised I think.

PN1341

THE COMMISSIONER: All right.

PN1342

MR WILLIAMS: If not, well, we can - - -

PN1343

THE COMMISSIONER: Hopefully, we won't have any Wi-Fi issues.

PN1344

MR WILLIAMS: Speaking for myself, this is a pretty complex case with a lot of – now already a very (indistinct) transcript. Personally, I think if I am to do the best job for my client, I would like to see the transcript before I make submissions and I feel I would need much more assistance (indistinct). As I said, it might be unlikely we're going to make it tomorrow anyway. So I just wondered whether we could either agree or – or if not, if you would direct that submissions be at a later time whether in writing or orally, so they can be discussed tomorrow of course. But to relieve the parties of the burden of having to prepare the submissions overnight? Having, as I say, I wouldn't be confident that I could do the best job in any event. Given the plethora of different testimony we have had today.

PN1345

THE COMMISSIONER: All right. Ms Dalton-Bridges, your views?

PN1346

MS DALTON-BRIDGES: Commissioner, we believe that most of these matters should be settled on the written submissions already received, however we do

believe there will be argument over what people have put on transcript today which won't necessarily reflect the realities I guess o of the situation. So with that in mind - - -

PN1347

THE COMMISSIONER: I don't know what that means, Ms Dalton-Bridges.

PN1348

MS DALTON-BRIDGES: Pardon?

PN1349

THE COMMISSIONER: I don't know what that means?

PN1350

MS DALTON-BRIDGES: Well, I guess our concern is - - -

PN1351

THE COMMISSIONER: You have all asked questions, they have given evidence. Isn't that the reality?

PN1352

MS DALTON-BRIDGES: Well, it is the reality, but unfortunately it's often their reality and that's what we have to sift through, so we would be amenable to further submissions, written or oral after tomorrow.

PN1353

THE COMMISSIONER: All right. I am happy to order the transcript of the two days. I am happy to sit as long as we need tomorrow evening to get through all of our witnesses. So I am not sure what anyone else's plans are. But look, tonight, I am listed again at 6 in person. We can't go any further tonight. Tomorrow, we can stay as long as we need.

PN1354

MR WILLIAMS: Well, that's fine, Commissioner. We will get the evidence finished tomorrow then.

PN1355

THE COMMISSIONER: All right.

PN1356

MS DALTON-BRIDGES: We had planned to be short in our cross-examination. We have been assured the respondents would also be short, but we intend to really be short tomorrow.

PN1357

THE COMMISSIONER: That seems highly amenable of you Ms Dalton-Bridges. I am happy to put this on for a third day if need be. And you have all put so much time and effort into this. I can sit on a third day, not a problem whatsoever. But if we get done tomorrow, of course, I will order the transcripts, I will do a one week turn around because it will be expensive and then you can all let me know how long you will need.

PN1358

MR WILLIAMS: Okay. Thanks, Commissioner.

PN1359

THE COMMISSIONER: Whether you want to put it all on – your responses on at the same time or whether you want the applicant to go first or the respondent to go first. Or second. I am in your hands. Have a think about that overnight.

PN1360

MR WILLIAMS: Thank you.

PN1361

THE COMMISSIONER: But you will get the transcripts.

PN1362

MS DALTON-BRIDGES: Thank you, Commissioner.

PN1363

THE COMMISSIONER: All right. So we will reconvene at 10 o'clock tomorrow.

PN1364

MR WILLIAMS: Thank you.

PN1365

MS DALTON-BRIDGES: Thank you.

**ADJOURNED UNTIL FRIDAY, 18 AUGUST 2023**

**[5.00 PM]**

**LIST OF WITNESSES, EXHIBITS AND MFIs**

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