



DECISION

Fair Work Act 2009

s.158 - Application to vary or revoke a modern award

Australian Industry Group, The
(AM2010/235)

Telecommunications services

VICE PRESIDENT LAWLER

MELBOURNE, 23 NOVEMBER 2010

Application to vary award to include a schedule detailing a national training wage.

[1] This is an application by the Australian Industry Group (**AiG**) pursuant to s.157 of the *Fair Work Act 2009* to vary the *Telecommunications Services Industry Award 2010*¹ (**Award**) to insert the standard National Training Wage schedule into that Award with an operative date of 1 January 2010.

[2] No submissions were received in opposition to the application. The CPSU and CEPU were only the entities who appeared at the hearing of the application and neither opposed the variation.

[3] Prima facie, the National Training Wage arrangements embodied in the standard National Training Wage schedule are an integral part of a proper safety net for any industry where trainees are feature of the industry. I accept the unchallenged submission of AiG that trainees are a feature of the telecommunications services industry. There is nothing before me to displace the prima facie position that the standard National Training Wage schedule should be included as an integral part of a proper safety net for the telecommunications services industry. To that extent, I am satisfied that the variation sought by AiG is “necessary to achieve the modern awards objective” in s.134. Indeed, the absence of the inclusion of that schedule would appear to be a matter of accidental oversight. I propose to vary the Award to include the standard National Training Wage schedule as sought by AiG.

[4] I accept the submission of Mr Smith for AiG that there are employers in the industry who have engaged trainees in accordance with the provisions of the *National Training Wage Award* in the period since 1 January 2010 and it is necessary to give the variation a retrospective operation to 1 January 2010 as a reasonable protection for those employers. However, I am concerned that the retrospective variation should not be used as a basis for any employer making a claim for restitution of an overpayment of wages where a ‘trainee’ was employed in a substantive classification under the Award and received wages and other wage

related payments in excess of those due under the National Training Wage schedule in the period between 1 January 2010 and the date the variation determination was made. Such employees should not be obliged to repay wages and other wage related payments solely because the present variation has a retrospective effect (of course, an employer should be free to pursue the recovery of overpayments arising for other reasons). I have included an additional paragraph 14.4(b) designed to achieve that outcome. None of the ‘parties’ that appeared raised any objection to the wording of clause 14.4(b).

VICE PRESIDENT

Appearances:

S. Smith for the Australian Industry Group.

L. Benfell for CPSU, Community and Public Sector Union.

A. Kentish and *D. Dwyer* for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

Hearing details:

2010.

Melbourne-Sydney (video link)

November 22.

<Price code A, MA000041 PR504135>

¹ MA00041.