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19 November 2018

Deputy President Gostencnik
Fair Work Commission
11 Exhibition Street
Melbourne 3000

Dear Deputy President

Re. AM2014/203 - 4 yearly review of modern awards – Graphic Arts, Printing and Publishing Award 2010

We refer to the AMWU's email correspondence of 19 November 2018 which contains a series of spurious assertions aimed at substantially delaying the finalisation of the review of the above Award and frustrating Ai Group's claim in the proceedings – a claim in support of which we have filed detailed submissions and evidence.

As a Full Bench (Ross P, Gooley DP and Spencer C) of the Commission made clear in the *4 Yearly Review of Awards - Family Friendly Working Arrangements Decision*:¹ (emphasis added)

[50] The Review is to be distinguished from *inter partes* proceedings. The Review is conducted on the Commission's own motion and is not dependent upon an application by an interested party. Nor is the Commission constrained by the terms of a particular application. The Commission is not required to make a decision in the terms applied for (s.599) and, in the Review, may vary a modern award in whatever terms it considers appropriate, subject to its obligation to accord interested parties procedural fairness and the application of relevant statutory provisions as outlined above.

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[414] The Claim has been made in the context of the 4 yearly review of modern awards and, as we have mentioned, the Review is distinguishable from *inter partes* proceedings. Section 156 imposes an obligation on the Commission to review all modern awards. The Review is conducted on the Commission's own motion and is not dependent upon an application by an interested party. Nor is the Commission constrained by the terms of a particular application. The Commission is not required to make a decision in the terms applied for (s.599) and, in a Review, may vary a modern award in whatever terms it considers appropriate, subject to its obligation to accord interested parties procedural fairness and the application of relevant statutory provisions, such as ss.134, 138 and 578 of the Act.

Ai Group and the AMWU have both submitted that the current provisions of Schedule C of the Award do not meet the requirements of ss.134 and 138 of the *Fair Work Act 2009* (FW Act) Therefore, Schedule C cannot remain in the Award in its current terms.

¹ [2018] FWCFB 1692.

With regard to Ai Group's proposal to delete Schedule C from the Award, the following points are relevant:

1. Ai Group outlined the proposal in its submission of 5 June 2018 as follows: (emphasis added)

"An alternative acceptable approach would be to remove Schedule C entirely from the Award, with classifications and wage rates determined through the application of the classification definitions in Schedule B of the Award. (This is already, by far, the most common method of classifying employees under this Award). The definitions in Schedule B include formal qualifications and indicative tasks. This approach would not prevent the Industry Training Package and competency standards being used to guide training outcomes in the industry. It would simply prevent adverse reclassification and cost consequences arising for employers due to decisions made by training bodies. The persons who make decisions on training bodies are typically appointed due to their knowledge and qualifications in training matters. They often have little or no detailed understanding of any linkages between awards and relevant competencies, and the effect of decisions made for training purposes on wage rates under awards. This is not surprising when there are only a very small number of awards which have classification structures formally linked to competency standards."

2. Ai Group's proposal was discussed at the FWC Conference on 17 August 2018: (emphasis added)

PN21

"MR SMITH: We obviously don't have any objection to obsolete competencies being removed, because they're irrelevant anyway; they're obsolete. We do object to any new competencies coming in and we do object to any upward weighting, but we are - and we have had many discussions with the AMWU about this - we are prepared to look at any particular competency units that, you know, may need to be the subject of more discussions. But the problem that we've got, your Honour, is there has been a process within the training system, if you like, of updating a training package, and of course training packages should be updated and reflect the latest technology, but to suddenly say just because a training body has made changes for reasons relating to training suddenly the award needs to completely reflect that, without consideration of what that means for wages rates, what that means for reclassification outcomes, to us jurisdictionally that would not be possible anyway because the Commission needs to be satisfied that the modern awards objectives are met. So what the union is seeking is a sweeping change to that linkage, and we're not able and prepared to just take the risk of what might flow from that. We would also make another point, as we do in our submission, that if this all gets too difficult there is a very simple - sir, and that is to break the link between the competencies and the award, and then the training package can of course be updated continuously without it affecting wage rates and classifications in the award, which is something that we've floated as a possible option if this matter goes to arbitration."

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PN73

MR SMITH: Yes, your Honour. Just a point of clarification, on 12 October, you mentioned there the submissions and evidence in response, and also any counter proposals. We'd assume that if we are pressing ahead with this breaking of the lent, we would file a draft determination on that date to do that?

The reference in paragraph 73 above to "*breaking of the lent*" is a transcription error. The word "lent" should be "link". It was a reference to Ai Group's proposal to break the link between the competency standards and the classifications in the Award, i.e. to delete Schedule C.

3. The directions issued by the Commission on 20 August 2018 relevantly stated: (emphasis added)
 1. The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) is to file in the Fair Work Commission, an outline of submissions and any witness statements and other documentary material on which the AMWU intends to rely in support of its proposed amendments to the Graphic Arts, Printing and Publishing Award 2010 concerning “competencies”, by no later than 5.00pm Friday 14 September 2018.
 2. Interested parties are to file in the Commission, an outline of submissions and any witness statements and other documentary material on which they intend to rely responding to the AMWU’s proposed amendments, by no later than 5.00pm Friday 12 October 2018. Any interested party proposing alternative amendments should also file a draft determination setting out its proposal and should address the proposal in the outline of submissions and evidentiary material filed.
 3. The AMWU is to file in the Commission any materials in reply, by no later than 5.00pm Friday 19 October 2018.
4. Consistent with the above directions, Ai Group filed 140 pages of materials, including:
 - A draft determination setting out Ai Group’s proposed amendments to the Award, i.e. the deletion of Schedule C with consequential amendments to other provisions;
 - A detailed outline of submissions which addressed in detail Ai Group’s proposed amendments to the Award and the reasons why those amendments are consistent with the requirements of the Act, including but not limited to ss.134, 138 and 156; and
 - A witness statement of Mr Daniel Murray, filed in support of Ai Group’s proposed amendments to the Award (and in opposition to the AMWU’s proposed amendments).
5. The AMWU filed a reply submission on 24 October 2018 in opposition to Ai Group’s proposed amendments to the Award. The submission was filed (5 days) late, with the agreement of Ai Group because the AMWU stated that it needed more time to review the materials filed by Ai Group and to consult with relevant parties. (We refer to the AMWU’s email correspondence to the Commission of 18 October 2018).
6. On 30 October 2018, Mr Peter Lane, Chief Executive of the Lane Print Group, filed a submission in support of Ai Group’s detailed submission.
7. Ai Group was represented at the hearing on 31 October 2018 and intended, that day, to supplement our detailed written submissions in support of our proposed award variations with oral submissions, but we did not have the opportunity to do so because the AMWU sought an adjournment to allow it to file a further witness statement from a PwC witness. The Full Bench stated that it would “reluctantly” grant the adjournment, despite the strong objections of Ai Group.

8. On 31 October, the Commission issued further directions for the conclusion of the proceedings, which relevantly stated:

1. The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) is to file in the Fair Work Commission, any witness statements and other documentary material on which it intends to rely in support of its proposal to amend Schedule C of the Award in the manner set out in its draft determination (AMWU proposal), by no later than 5.00pm Thursday 15 November 2018.
2. Interested parties are to file in the Commission, any witness statements and other documentary material on which they intend to rely in opposing the AMWU proposal, by no later than 5.00pm Thursday 29 November 2018.
3. The AMWU is to file in the Commission any materials in reply, by no later than 5.00pm Thursday 6 December 2018.
4. The matter will be listed for hearing in Sydney at midday on Monday 10 December 2018.

Not surprisingly, directions 1 to 3 above do not address Ai Group’s proposed amendments because detailed submissions and evidence had already been filed in support of those amendments, and it was the AMWU that sought the opportunity to file additional evidence at the hearing on 31 October, not Ai Group.

9. On 14 November 2018, without any discussion with, or notification to, Ai Group, the AMWU wrote to the Commission seeking that the hearing listed on Monday 10 December 2018 be cancelled.
10. At 16 November 2018, the FWC cancelled the hearing on 10 December, as requested by the AMWU, and advised the parties that the directions issued on 31 October are vacated.
11. On 16 November 2018, Ai Group wrote to the Commission clarifying that it had not agreed to the vacation of the hearing on 10 December but was prepared to have its proposed variations to the Award determined on the papers.

The above events make it crystal clear that the AMWU and other interested parties have had every opportunity to make submissions and present evidence in opposition to Ai Group’s proposed amendments to the Award.

Ai Group strongly objects to the AMWU’s assertion in its email of 19 November that Ai Group’s proposed amendments were not intended to be dealt with at the hearing on 10 December 2018. As the Full Bench is aware, this hearing was scheduled as a continuation of the proceedings on 31 October 2018 – proceedings that are squarely dealing with Ai Group’s proposed amendments to the Award.

Given the AMWU’s assertion, Ai Group submits that a new Notice of Listing should be issued for a hearing on 10 December 2018, clarifying that the hearing is scheduled for the purpose of hearing final oral submissions in relation to Ai Group’s proposed amendments to the Award. The hearing date falls in three weeks’ time so the AMWU has an abundance of time to prepare for the hearing.

With regard to the spurious argument in the AMWU's correspondence of 19 November 2018, that it needs more time to consider the draft amendments to Schedule B outlined in Ai Group's correspondence of 16 November, these amendments have been put forward in response to a suggestion from the Full Bench at the conclusion of the hearing on 31 October 2018 that Ai Group give consideration to the "or equivalent" issue regarding formal qualifications. As stated in our correspondence of 16 November, these amendments have been put forward merely as an indication to the Full Bench of amendments that we would not oppose to address the "or equivalent" issue raised by the Full Bench. Ai Group's preferred position is that the Full Bench vary the Award in the terms set out in the draft determination that we filed with our detailed written submission.

In conclusion, as stated above, we submit that a new Notice of Listing should be issued for a hearing on 10 December 2018, clarifying that the hearing is scheduled for the purpose of hearing final oral submissions in relation to Ai Group's proposed amendments to the Award.

Yours sincerely

A handwritten signature in black ink, appearing to read "S. Smith". The signature is written in a cursive, flowing style.

Stephen Smith

Head of National Workplace Relations Policy