

**From:** Paul Ryan <paulryan@bigpond.net.au>  
**Sent:** Tuesday, 10 May 2022 9:01 AM  
**To:** Chambers - McKinnon C <Chambers.McKinnon.C@fwc.gov.au>  
**Cc:** 'Katie Sweatman' <katie.sweatman@kingstonreid.com>; 'Vasuki Paul' <Vasuki.Paul@aigroup.com.au>; 'Lorraine Biviano' <lorraine.biviano@twu.com.au>; 'Nigel Ward' <Nigel.Ward@ablawyers.com.au>; legal@twu.com.au; AMOD <AMOD@fwc.gov.au>; 'Catherine Flannery-Sweet' <catherine.flannery-sweet@kingstonreid.com>  
**Subject:** RE: AM2021/72 Application by Menulog Pty Ltd - ARTIO Response

Dear Associate,  
Please find attached ARTIO's response to the table distributed by Menulog's representatives in this matter.  
We note that the matter is listed for a further conference next week, 18 May, in Sydney.

Kind Regards

Paul Ryan  
National Industrial Advisor  
ARTIO  
0415331031

**From:** Katie Sweatman <[katie.sweatman@kingstonreid.com](mailto:katie.sweatman@kingstonreid.com)>  
**Sent:** Wednesday, 13 April 2022 3:59 PM  
**To:** Chambers - McKinnon C <[Chambers.McKinnon.C@fwc.gov.au](mailto:Chambers.McKinnon.C@fwc.gov.au)>  
**Cc:** Vasuki Paul <[Vasuki.Paul@aigroup.com.au](mailto:Vasuki.Paul@aigroup.com.au)>; Paul Ryan <[paulryan@bigpond.net.au](mailto:paulryan@bigpond.net.au)>; Lorraine Biviano <[lorraine.biviano@twu.com.au](mailto:lorraine.biviano@twu.com.au)>; Nigel Ward <[Nigel.Ward@ablawyers.com.au](mailto:Nigel.Ward@ablawyers.com.au)>; 'legal@twu.com.au' <[legal@twu.com.au](mailto:legal@twu.com.au)>; AMOD <[amod@fwc.gov.au](mailto:amod@fwc.gov.au)>; Catherine Flannery-Sweet <[catherine.flannery-sweet@kingstonreid.com](mailto:catherine.flannery-sweet@kingstonreid.com)>  
**Subject:** RE: AM2021/72 Application by Menulog Pty Ltd - s.158 [KR-PRODUCTION.FID7678]

Dear Associate

Further to the Statement made by Commissioner McKinnon on 16 March 2022, please now find **attached** a table outlining the terms of the *Road Transport and Distribution Award 2020*, the reasons why Menulog says that these terms are unsuitable for the on demand delivery services industry, and setting out how the proposed *On Demand Delivery Services Industry Award* would deal with such entitlements.

We look forward to receiving the interested parties' responses in due course, and otherwise discussing further at the in person conciliation listed for 18 May 2022.

Kind regards

Katie

**Katie Sweatman**  
Partner



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**From:** Chambers - McKinnon C <[Chambers.McKinnon.C@fwc.gov.au](mailto:Chambers.McKinnon.C@fwc.gov.au)>

**Sent:** Wednesday, 16 March 2022 1:46 PM

**To:** Katie Sweatman <[katie.sweatman@kingstonreid.com](mailto:katie.sweatman@kingstonreid.com)>; Lorraine Biviano <[lorraine.biviano@twu.com.au](mailto:lorraine.biviano@twu.com.au)>; 'legal@twu.com.au' <[legal@twu.com.au](mailto:legal@twu.com.au)>; Nigel Ward <[Nigel.Ward@ablawyers.com.au](mailto:Nigel.Ward@ablawyers.com.au)>; Vasuki Paul <[Vasuki.Paul@aigroup.com.au](mailto:Vasuki.Paul@aigroup.com.au)>; Paul Ryan <[paulryan@bigpond.net.au](mailto:paulryan@bigpond.net.au)>

**Subject:** RE: AM2021/72 Application by Menulog Pty Ltd - s.158 [KR-PRODUCTION.FID7678]

OFFICIAL

Dear parties,

**AM2021/72 Application by Menulog Pty Ltd – s.158**

I refer to the email from Ms Sweatman, below.

Please see the **attached** revised Statement, which will be published on the Commission's website.

Kind regards,

**Shehara Mendis**

Associate to Commissioner McKinnon

**Fair Work Commission**

Tel: 03 8656 4521

[chambers.mckinnon.c@fwc.gov.au](mailto:chambers.mckinnon.c@fwc.gov.au)

Level 10, 80 William Street

East Sydney NSW 2011

The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander peoples. We acknowledge their continuing connection to country and pay our respects to their Elders past present and emerging.



**From:** Katie Sweatman <[katie.sweatman@kingstonreid.com](mailto:katie.sweatman@kingstonreid.com)>

**Sent:** Wednesday, 16 March 2022 1:32 PM

**To:** Chambers - McKinnon C <[Chambers.McKinnon.C@fwc.gov.au](mailto:Chambers.McKinnon.C@fwc.gov.au)>; Lorraine Biviano <[lorraine.biviano@twu.com.au](mailto:lorraine.biviano@twu.com.au)>; 'legal@twu.com.au' <[legal@twu.com.au](mailto:legal@twu.com.au)>; Nigel Ward <[Nigel.Ward@ablawyers.com.au](mailto:Nigel.Ward@ablawyers.com.au)>; Vasuki Paul <[Vasuki.Paul@aigroup.com.au](mailto:Vasuki.Paul@aigroup.com.au)>; Paul Ryan

<[paulryan@bigpond.net.au](mailto:paulryan@bigpond.net.au)>

**Subject:** RE: AM2021/72 Application by Menulog Pty Ltd – s.158 [KR-PRODUCTION.FID7678]

Dear Associate

As briefly noted at the start of the conference this morning, my instructor was notably absent from the conference as his partner had just gone into labour in the early hours of this morning. I have now clarified with Menulog that he intends to take a period of 3 weeks' parental leave from today.

I would accordingly be grateful if the Commissioner and the interested parties might indulge us an additional week to file the proposed table so that this is able to have his input ahead of filing on or before Wednesday 13 April 2022. We would have no objection to the corresponding date for responses to be extended by a week without disturbing the date upon which we would return before Commission McKinnon.

I'm otherwise comfortable that the Statement of Progress is an accurate outline of the outcomes of this morning's conference.

Kind regards

Katie

**Katie Sweatman**  
Partner



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**From:** Chambers - McKinnon C <[Chambers.McKinnon.C@fwc.gov.au](mailto:Chambers.McKinnon.C@fwc.gov.au)>

**Sent:** Wednesday, 16 March 2022 1:12 PM

**To:** Katie Sweatman <[katie.sweatman@kingstonreid.com](mailto:katie.sweatman@kingstonreid.com)>; Lorraine Biviano <[lorraine.biviano@twu.com.au](mailto:lorraine.biviano@twu.com.au)>; 'legal@twu.com.au' <[legal@twu.com.au](mailto:legal@twu.com.au)>; Nigel Ward <[Nigel.Ward@ablawyers.com.au](mailto:Nigel.Ward@ablawyers.com.au)>; Vasuki Paul <[Vasuki.Paul@aigroup.com.au](mailto:Vasuki.Paul@aigroup.com.au)>; Paul Ryan <[paulryan@bigpond.net.au](mailto:paulryan@bigpond.net.au)>

**Subject:** AM2021/72 Application by Menulog Pty Ltd – s.158

Dear parties,

**AM2021/72 Application by Menulog Pty Ltd – s.158**

I refer to the above matter and this morning's conciliation, before Commissioner McKinnon.

Please see the **attached** Statement from the Commissioner, which will also be published on the Commission's website.

Kind regards,

**Shehara Mendis**

Associate to Commissioner McKinnon

**Fair Work Commission**

Tel: 03 8656 4521

[chambers.mckinnon.c@fwc.gov.au](mailto:chambers.mckinnon.c@fwc.gov.au)

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East Sydney NSW 2011

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Australian Road Transport  
Industrial Organisation

ABN: 63 734 697 902

# AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

*Respect, Respond and Represent*

## **In the Fair Work Commission**

**Matter No: AM2021/72**

**S. 158 - Application by Menulog Pty Ltd to make a Modern Award for the On Demand Delivery Services Industry**

## **Response by the Australian Road Transport Industrial Organization (ARTIO) to the Table prepared by Menulog and circulated to parties on 13 April, 2022 in accordance with the Statement made by Commissioner McKinnon on 16 March, 2022**

The Australian Road Transport Industrial Organisation (ARTIO) continues to oppose the application by Menulog for the making of a modern award to cover the ‘On Demand Delivery Services Industry’.

Despite the Full Bench decision of 28 January, 2022, which made it crystal clear that the Road Transport & Distribution Award 2020 (RTD Award) covers the ‘on demand services industry’ it appears to ARTIO that Menulog is continuing to ignore that decision. Further, the table lodged by Menulog could be categorised as their ‘ambit claim’ and as such, it is focussed on attacking and reducing/removing the wages and conditions of employment of transport workers, established over a long period of time.

ARTIO will not be commenting on the Menulog table on a ‘line by line’ basis, but rather pointing out some of the absurdities and totally unfair provisions claimed as necessary to ‘meet the modern awards objective’ in their version of an ‘On Demand Delivery Services Award.’

Menulog seem to have ideologically missed the purpose of Modern Awards and the current IR system – all employees are provided with certain inalienable protections that ensure a ‘Fair Go’ and provide some degree of certainty to both employers and employees. For example. minimum shift lengths - by their own evidence the average driver works 14.5 hours per week, which means an

average of 3 hours per day. The minimum shift length suggested by Menulog of 0.5 hours is completely unfair (Clause 10) and unacceptable.

From a general perspective, Menulog seem incapable of recognising that should they employ a substantial number of drivers, they are no longer an IT business, but rather a road transport business (their response at Clause 4). It begs the question - how many drivers do they need to directly employ before they would acknowledge this?

ARTIO submits that if all of Menulog's suggestions were introduced the impact of remuneration for these so-called 'on demand employees' would reduce by a factor of 40% when compared to their entitlements as employees under the RTD Award, whilst at the same time losing many of the existing RTD Award protections. Further, it appears to ARTIO that Menulog will not provide vehicles, but rather expect its employees to use their own vehicle and then be paid a pittance for such use.

## **RTD Award Issues**

In summary, the major terms and conditions contained in the RTD Award, which Menulog are seeking to reduce are listed below:

1. Menulog's proposed rates of pay are up to \$46 less per week than the current RTD Award rates;
2. Ordinary hours of work can be worked at any time and on any day, between 6am – 11pm;
3. For work outside those hours a 10% loading would be payable, except on public holidays when the loading would be 50%;
4. The introduction of broken shifts which may be worked, provided that any shift must be at least 1 hour, although this is clearly inconsistent with the provision in their proposed cl. 10.5(b) which allows for a part-time employee to be engaged for a minimum of 30 minutes;
5. It is not clear as to when or how overtime would be calculated, other than after 38 hours in a week;
6. Casuals will not receive any loading on overtime;
7. The 'higher duties' clause will become almost inoperative as on their own evidence that employees work an average of 14.5 hours per week, then there would be very few instances where an employee would go beyond 4 hours on any given day; equally, under Menulog's classification structure, only an employee with 'delegated responsibility' and supervising at least 2 employees would receive such an allowance;

8. ARTIO does not believe that Menulog will supply vehicles to their employees as cl. 17 provides for payment of vehicle allowance for employees using their own vehicle at a rate of 16 cents per kilometre (the ATO currently allow an amount of 72 cents for tax purposes);
9. Wages can be paid monthly;
10. To claim that ‘junior rates’ have ‘no work to do under the RTD Award’ shows a total lack of understanding of the current use of juniors in the transport industry. ARTIO notes that Menulog employees, 16 years of age and under can be paid 50% of the adult rate – this would equate currently to \$10.17 per hour – how does this meet the modern awards objective?

## **ARTIO Observations**

ARTIO observes that Menulog have made several comments that certain proposed changes in their drafting do not alter entitlements. This is plainly false:

- At Clause 17.4 – their different drafting would result in an employee getting less in situations where they work over a majority of the shift at a higher rate, but that majority is less than 4 hours. Given, the average shift length is likely less than 4 hours, this would be all of the time;
- At Clause 18 – their different drafting allows for employees to only be paid monthly, rather than weekly, which has been a well-established entitlement for generations;
- At Clause 21.5 – their different wording significantly reduces the amount of time off the employee would accrue for working a public holiday;
- At Clause 12, Menulog choose to ignore the RTD classification structure and that it includes rates for jobs like yardperson and bicycle courier, roles often filled by juniors,
  - Noting also that under their structure an employee 16 years of age and under can be paid a rate of \$10.17 per hour – this does not meet the modern awards objective.

At Clause 15, Menulog seem to argue against weekly rosters due to minute by minute changes in customer demand – this is at odds with their other comments about peak periods of operation, which they clearly understand when those are and they would have suitable metrics to determine minimum future staffing needs with a relative level of certainty. A good example, from another award, is how tow truck drivers operate under similar circumstances and still have set start times.

Finally, there are other issues within the Menulog document that ARTIO takes issue with, and it will raise these, if and when necessary, at the Conference scheduled for 18 May.

ARTIO

10 May 2022