



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009

s.160 - Application to vary a modern award to remove ambiguity or uncertainty or correct error

"Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU) (AM2010/234)

Manufacturing and associated industries

SENIOR DEPUTY PRESIDENT ACTON

MELBOURNE, 24 DECEMBER 2010

Application to vary a modern award.

[1] The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) (AMWU) has made an application to vary the definition of a classification in the *Manufacturing and Associated Industries and Occupations Award 2010*¹ (modern Manufacturing Award). The definitions of the classifications in the modern Manufacturing Award are contained in Schedule B to the modern Manufacturing Award. The AMWU seeks to vary clause B.3.16 of Schedule B by adding the word “or” as underlined below to the clause, so that the clause would read as follows:

“B.3.16 Wage Group: C2(b)

(a) Principal Technical Officer

(i) A Principal Technical Officer works above and beyond an employee at the C2(a) level and has successfully completed sufficient additional training to enable the employee to perform work within the scope of this level in addition to a national advanced diploma or equivalent. Within organisational policy guidelines and objectives a principal technical officer:

- performs work requiring mature technical knowledge involving a high degree of autonomy, originality and independent judgment;
- looks after and is responsible for projects and coordinating such projects with other areas of the organisation as required by the operation of the organisation;
- is responsible for the coordination of general and specialist employees engaged in projects requiring complex and specialised knowledge;
- plans and implements those programs necessary to achieve the objectives of a particular project;

- in the performance of the above functions, applies knowledge and/or guidance relevant in any or all of the fields of designing, planning and technical work as required by the operation;
- operates within broad statements of objectives without requiring detailed instructions; or
- performs work at the above level of skill in a particular technical field;
- has as the overriding feature of their employment the ability to perform creative, original work of a highly complex and sophisticated nature;
- provides specialised technical guidance to other employees performing work within the same technical field.

(ii) In a laboratory, a Principal Technical Officer will exhibit and use technical principles, research and development skills as well as interpersonal/supervisory skills in the co-ordination of a specialist laboratory team.”

[2] During the course of the proceedings on the application, the AMWU proposed that the clause also be renumbered as follows in order to remove any uncertainty about the effect of their variation:

“B.3.16 Wage Group: C2(b)

Principal Technical Officer

- (a) A Principal Technical Officer works above and beyond an employee at the C2(a) level and has successfully completed sufficient additional training to enable the employee to perform work within the scope of this level in addition to a national advanced diploma or equivalent. Within organisational policy guidelines and objectives a principal technical officer:
- (i)
- performs work requiring mature technical knowledge involving a high degree of autonomy, originality and independent judgment;
 - looks after and is responsible for projects and coordinating such projects with other areas of the organisation as required by the operation of the organisation;
 - is responsible for the coordination of general and specialist employees engaged in projects requiring complex and specialised knowledge;
 - plans and implements those programs necessary to achieve the objectives of a particular project;
 - in the performance of the above functions, applies knowledge and/or guidance relevant in any or all of the fields of designing, planning and technical work as required by the operation;
 - operates within broad statements of objectives without requiring detailed instructions; or

- (ii)
 - performs work at the above level of skill in a particular technical field;
 - has as the overriding feature of their employment the ability to perform creative, original work of a highly complex and sophisticated nature;
 - provides specialised technical guidance to other employees performing work within the same technical field.

(b) In a laboratory, a Principal Technical Officer will exhibit and use technical principles, research and development skills as well as interpersonal/supervisory skills in the co-ordination of a specialist laboratory team.”

[3] The AMWU submitted that their variation was necessary to correct an error. The Australian Industry Group (AIG) opposed the variation being made.

[4] I am satisfied I should make the variation sought by the AMWU, albeit in the renumbered format proposed by the AMWU so that the effect of the variation is clear. I am satisfied the variation will correct an error.

[5] I am so satisfied because the renumbered format should overcome the AIG’s main reason for opposing the variation.

[6] Further, the word “or” was included in a clause similar to clause B.3.16 in union and employer provided drafts of the modern Manufacturing Award leading up to the publishing of the Australian Industrial Relations Commission (AIRC) exposure draft of the modern Manufacturing Award. It was also included in a clause similar to clause B.3.16 in the AIRC’s exposure draft of the modern Manufacturing Award. There is no explanation in the AIRC’s Award Modernisation decisions as to why the word “or” was not included in clause B.3.16 in the modern Manufacturing Award made in December 2008.

[7] Moreover, the word “or” was included in the effective equivalent of clause B.3.16 in the *Metal, Engineering and Associated Industries Award 1998*² (Metals Award). The Metals Award was very significant in the making of the modern Manufacturing Award.

[8] While the AMWU sought the inclusion of the word “or” in an application of 15 December 2009³ to vary clause B.3.16 in the modern Manufacturing Award and the Full Bench did not grant that particular variation, it needs to be borne in mind that their application in AM2009/175 sought many variations and did not highlight that particular variation. Indeed, in submissions to the AIRC on application AM2009/175 the AIG pointed out the AMWU’s application did not properly identify all the variations sought and urged the AIRC not to grant a variation sought which was not properly identified and explained.

[9] The AMWU has now detailed their rationale for seeking the inclusion of the word “or” in clause B.3.16 of the modern Manufacturing Award.

[10] A determination reflecting the variation that I am satisfied should be made to the modern Manufacturing Award arising from the AMWU's application in this matter is being issued at the same time as this decision.⁴

SENIOR DEPUTY PRESIDENT

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¹ MA000010.

² AP789529.

³ AM2009/175.

⁴ *Re Manufacturing and Associated Industries and Occupations Award 2010*, PR505533.