

FAIR WORK COMMISSION

MATTER NO. AM2018/27

s.158 - Application to vary the Security Services Industry Award 2010

Statement of Christian John Gavin

I, Christian John Gavin, of [REDACTED], say:

1. I am a member of United Voice.
2. Where I refer to a conversation in this statement and I cannot remember the exact words used, I have stated my best memory of the words spoken, or the effect of what was said.

Personal Details

3. I am [REDACTED] years of age and was born on [REDACTED].

Work History

4. I have worked in the security industry since about October 1999.
5. I have completed a Trade Certificate (Fitting and Turning) and Certificates II in Security Operations and Certificate IV in Security and Risk Management.
6. I worked at BHP Newcastle for almost 21 years until its closure in 1999 being employed in the final two years as a Maintenance Planner and Supervisor.
7. During my security career I have worked for SERMACS as a Leading hand/Supervisor in Maritime security, with CHUBB in Aviation security and with Serco Sodexo Defence Security and MSS Security in Defence security.
8. My duties have included foot patrol, escorts, access control, site inductions, inputting personnel details into the building's access system (this access system controls three buildings), and production of security identification cards.

Current Work

9. On 1 November 2014, I commenced work with MSS Security as a part time employee. I work 37 hours per week. Attached and marked as Annexure A are copies of my rosters from 15 July to 4 August 2019.
10. I am employed under Security Services Industry Award 2010 (the Award). I am classified under the Award as a Security Officer Level 3.
11. MSS Security specifies that Security Officers must wear black leather shoes with non-skid soles. This is found in the MSS Employee Standing Instructions, which states:

Standing Instruction; Discipline and Conduct 1.3 Uniforms: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] from the MSS Employee
Standing Instructions.

13. On employment, MSS Security provide employees with 3-4 shirts, 2 pants, 1 jumper, 1 cold weather jacket, 1 hat, 1 tie and for some employees wet weather coats, but I have not been given this last item. Uniform items are replaced as needed.
14. In around August or September 2018 I emailed my supervisor [REDACTED] (Site Security Manager –RAAF Williamtown) and asked how much would the company reimburse me for the purchase of footwear that complied with our company's Standing Instructions regarding uniforms.
15. On 20 September 2018 I emailed [REDACTED] telling him that I had found some boots and told him what type of boots and the cost of those boots and included my preferred boots. In my email I said that I could buy cheap boots from Big W for about \$80 or I could buy a better boot (the Taipan) from the NSW Rural Fire Service Association (RFS) shop for \$225 + delivery. I said that I preferred the Taipan boot size 8 ½.
16. On the same date, [REDACTED] replied to me by email saying he would escalate the issue to human resources.
17. On 3 October 2018 I sent an email to the MSS Human Resources Manager [REDACTED] [REDACTED] enquiring about the reimbursement of shoes for work. Attached and marked as Annexure C is a copy of the email.
18. On 17 October 2018 I again emailed [REDACTED] asking for a follow up because the MSS HR Manager had not replied to an email I had sent.
19. [REDACTED] replied back on the same date saying that under the MSS Employee Standing Instructions I was required to wear footwear that was of black leather with a non-skid rubber sole and also that MSS Security would not reimburse me for the cost. Attached and marked as Annexure D is a copy of [REDACTED] email response.
20. On 1 November 2018 the MSS HR Manager [REDACTED] replied to my emails stating that shoes are not part of the uniform but I was required to wear black footwear. The HR Manager [REDACTED] also stated that MSS Security would not reimburse me for the purchase cost unless the shoes were need for safety purposes. [REDACTED] informed me that there was a problem with the wording in the Standing Instruction and that it would be revised accordingly to provide clarity. Attached and marked Annexure E is a copy of [REDACTED] email.
21. On 1 November 2018 I responded telling [REDACTED] by email that I was going to take it further and contact Fair Work. I also asked why the shoes needed to be non-slip soles and whether it was it for safety reasons. Attached and marked Annexure F is a copy of this email.
22. On 2 November 2018 [REDACTED] responded by email stating that the soles had to be non-slip for safety reasons. Attached and marked Annexure G is a copy of this email.
23. On 2 November 2018 I queried by email why [REDACTED] had said the non-skid soles were for safety reason and if so, I requested that MSS Security supply the safety item. Attached and marked Annexure H is a copy of this email.

24. On 2 November 2018 [REDACTED] responded stating that the shoes were not part of the uniform but part of the MSS Dress Code. Attached and marked Annexure I is a copy of this email.
25. The MSS Employee Standing Instructions Discipline and Conduct 1.3 Uniforms indicates what the uniform is, however my employer is trying to get around this now by saying footwear is part of the 'Dress Code'.
26. To date the wording in the MSS Employee Standing Instructions has not changed.
27. Because the condition of my boots were causing me concern I purchased a pair of boots that complied with the Dress Code; black leather boots with non-skid sole. I am unsure of the cost of the boots as I cannot find the receipt.
28. Sometime in late 2018 I contacted the Fair Work Commission seeking to have the section of the award changed under the 4 yearly review but was advised that at that time the previously 4 yearly review was still progressing and it would be better to apply for an award variation.

Christian Gavin

Date: 26 July 2019

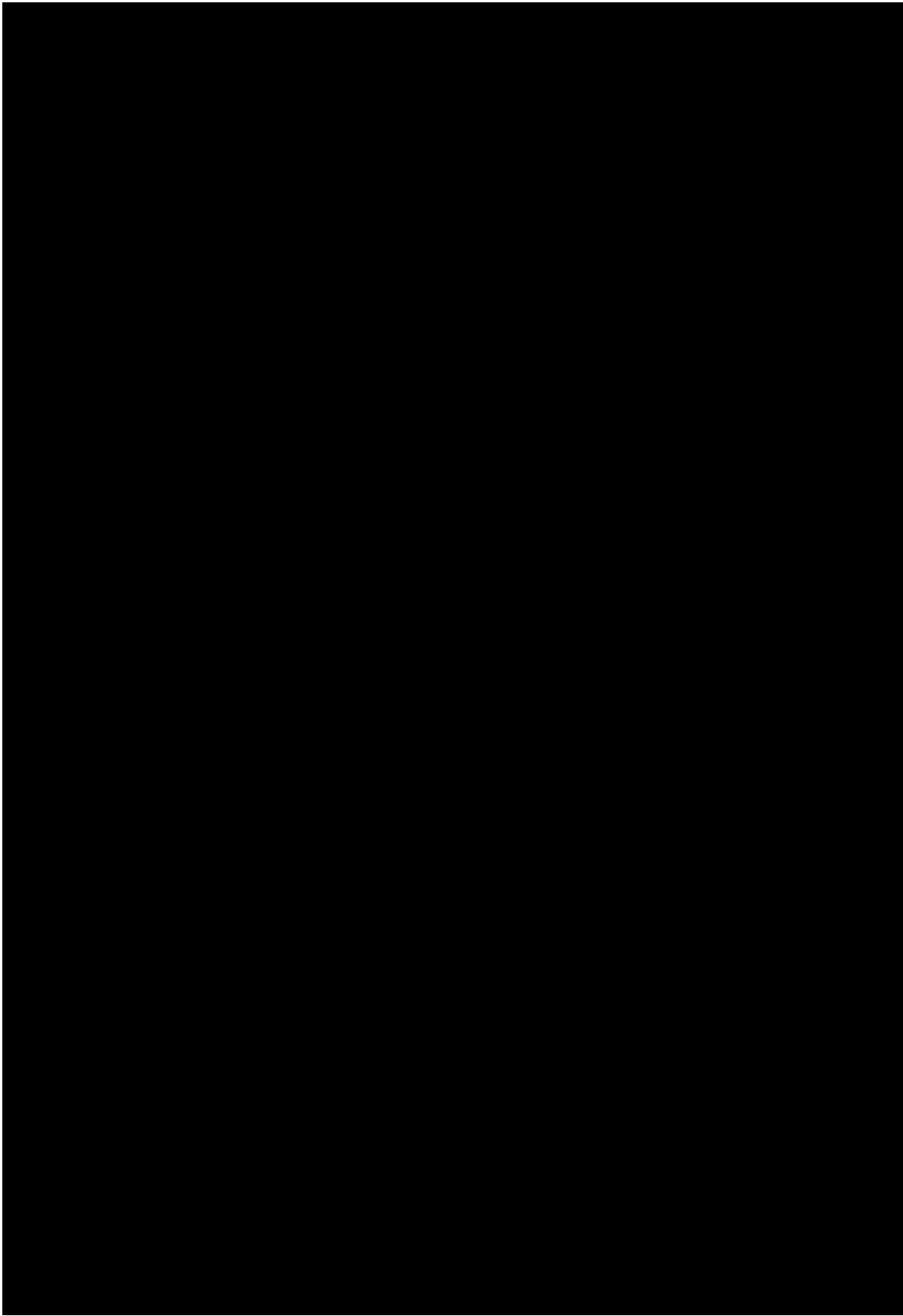
Signature: [REDACTED]

Email: inggavkc@gmail.com

Last Revised 08-07-19										WLM RAAF MSS SECURITY STAFF ROSTER -										WEEK ENDING: 21-Jul-19										W29									
15-Jul-19					16-Jul-19					17-Jul-19					18-Jul-19					19-Jul-19					20-Jul-19					21-Jul-19									
MON					TUES					WED					THUR					FRI					SAT					SUN									
2 SQN HQ					0700 - 1645					0700 - 1645					0700 - 1645					0700 - 1645					0700 - 1445														
					9					9					9					9					7.25														
					Chris Gavin					Chris Gavin					Chris Gavin					Chris Gavin										Not required					Not required				

Last Revised 08-07-19		WLM RAAF MSS SECURITY STAFF ROSTER -						WEEK ENDING: 28-Jul-19		W30	
		22-Jul-19	23-Jul-19	24-Jul-19	25-Jul-19	26-Jul-19	27-Jul-19	28-Jul-19			
		MON	TUES	WED	THUR	FRI	SAT	SUN			
2 SQN Hangar	0700 - 1645	9	0700 - 1645	9	0700 - 1645	9	0700 - 1645	9	0700 - 1445	7.25	
	Chris Gavin		Chris Gavin		Chris Gavin		Chris Gavin				Not required

Last Revised 19-07-19		WLM RAAF MSS SECURITY STAFF ROSTER					WEEK ENDING: 04-Aug-19		W31				
29-Jul-19		30-Jul-19		31-Jul-19		01-Aug-19		02-Aug-19		03-Aug-19		04-Aug-19	
MON		TUES		WED		THUR		FRI		SAT		SUN	
2 SQN HQ		0700 - 1645	9	0700 - 1645	9	0700 - 1645	9	0700 - 1645	9	0700 - 1445	7	Not required	
		Chris Gavin		Chris Gavin		Chris Gavin		Chris Gavin				Not required	



inggavkc@gmail.com <inggavkc@gmail.com>

Wed, Oct 3, 2018 at 6:52
PM

To: [REDACTED]@msssecurity.com.au

Hi [REDACTED], I am trying to find out how much MSS will reimburse me for the purchase of footwear that complies with the MSS Employee Standing Instructions Section 1.3 Uniforms.

Because MSS specify black leather shoes with non-skid rubber soles as part of the uniform the company must reimburse me for the purchase as required under the Security Services Industry Award 2010 section 15.11 (b)

I have contacted my supervisor but he has said that HR are looking into it. It has been about 4 weeks so far, is there any news. If as my supervisor says that MSS don't reimburse for uniforms (footwear) that would mean the award does not apply. If the company says the award does not apply how can section 1.3 **Uniforms** of the Employee Standing Instructions apply.

Thank you

Christian Gavin

From: Williamtown Manager [REDACTED]@msssecurity.com.au>
Sent: Wednesday, 17 October 2018 9:50 AM
To: Gavin, Christian MR <[REDACTED]>
Subject: RE: Shoes [SEC=UNCLASSIFIED]

Hi [REDACTED],

I have heard back from Head Office.

The response is that as per Section 1.3 of the MSS Employee Standing Instructions, you are required to wear footwear that is black leather with a non-skid rubber sole.

MSS will not be reimbursing staff for footwear unless it is required as a safety item; eg: steel capped boots in a construction zone.

I have attached the latest available copy of the MSS Standing Instructions.

The relevant section is here:

Regards,

[REDACTED]

Site Security Manager - RAAF Williamtown

RAAF Williamtown

Building 220, Barns Road

Williamtown, NSW, 2314

Postal address: PO BOX 210, Medowie, NSW 2318

p [REDACTED]

m [REDACTED]

e [REDACTED]

e [REDACTED]@msssecurity.com.au

w www.msssecurity.com.au

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On 1/11/2018 5:24 PM, [REDACTED] wrote:

Chris,

Apologies for the delay in getting back to you. The company's position is shoes are not considered part of the company uniform and as such employees are not reimburse for footwear purchase. However, we do require footwear to be black, professional looking and meet particular safety requirements.

The points you have highlighted below are good and as such I have provided feedback up the chain to consider a revision to the Employee Standing Instructions.

If a role/ site requires employees to wear a specific type of shoe (e.g. steel cap boots), the company may reimburse where a specific brand and model of shoe is required to be worn.

I hope this clarifies your question, if you require further information or wish to discuss further please contact me.

Kind regards,

[REDACTED] NSW

Level 2, Gateway Business Park,
63-79 Parramatta Road Silverwater NSW 2128 Australia

t
m
e [REDACTED]

Please consider the environment before printing this email.

From: inggavkc@gmail.com [mailto:inggavkc@gmail.com]

Sent: Thursday, 1 November 2018 5:56 PM

To: Kirsten Bryant [REDACTED]@msssecurity.com.au>

Subject: Re: reimbursement of uniform

[REDACTED], I am still pursuing this and will contact Fair Work tomorrow. The our company's uniform policy clear states in the Employee Hand book what our uniform is. You have also stated what footwear is required as part of the uniform. I can understand the reluctance to admitted that shoes are part of the uniform due to costs. Its a situation our head office has got themselves into.

[REDACTED], why do the shoes need to be non-slip soles, is this for safety reasons if so can MSS supply me with safety boots, that is my preferred choice of footwear. If so the problems solved.

Christian Gavin

On 2/11/2018 11:12 AM, [REDACTED] wrote:

Hi Chris,

The shoes must be non-slip for safety reasons. I have looked into this and unfortunately, the post you work at the current site does not require Safety Boots to be worn.

Thank you for bringing our attention to the wording in the standing instructions and it will be revised accordingly to provide clarity.

Kind regards,

[REDACTED]

Level 2, Gateway Business Park,
63-79 Parramatta Road Silverwater NSW 2128 Australia

t [REDACTED]
m [REDACTED]
e [REDACTED]@msssecurity.com.au

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From: inggavkc@gmail.com [mailto:inggavkc@gmail.com]

Sent: Friday, 2 November 2018 2:55 PM

To: Kirsten Bryant <[REDACTED]@msssecurity.com.au>

Subject: Re: reimbursement of uniform

[REDACTED] now you are saying I have to have a certain shoe for safety reasons and as such I request MSS to supply me with shoes that comply with the safety standard of MSS.

Subject:RE: reimbursement of uniform

Date:Fri, 2 Nov 2018 05:14:45 +0000

From: [REDACTED] <[REDACTED]@msssecurity.com.au>

To:inggavkc@gmail.com <inggavkc@gmail.com>

Chris,

To clarify shoes are not part of the uniform. It is a dress code requirement. If based on the role and site, steel cap or composite toe protection is required then the company does provide these shoes. However, your current role at RAAF Williamstown does not require this type of safety shoe to be worn.

The dress code requirement for staff working on client sites is that footwear must be black, professional with a slip resistant (non-skid) sole to not impact the safety of the wearer.

At this time the company does not supply the shoes unless steel cap or composite toe protection is required to perform the job.

Kind regards,

[REDACTED]

Level 2, Gateway Business Park,
63-79 Parramatta Road Silverwater NSW 2128 Australia

t [REDACTED]
m [REDACTED]
e [REDACTED]@msssecurity.com.au

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Form F46 Application to vary a modern award

Fair Work Act 2009, ss.157–160

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

The Applicant



These are the details of the person who is making the application.

Title	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Christian		
Surname	Gavin		
Postal address	[REDACTED]		
Suburb	[REDACTED]		
State or territory	[REDACTED]	Postcode	[REDACTED]
Phone number	[REDACTED]	Fax number	
Email address	inggavkc@gmail.com		

If the Applicant is a company or organisation please also provide the following details

Legal name of business	
Trading name of business	
ABN/ACN	
Contact person	

Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes—Specify language

No

Does the Applicant require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes— Please specify the assistance required

No

Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, or a representative from a union or employer association. There is no requirement to have a representative.

Yes—Provide representative's details below

No

Applicant's representative



These are the details of the person or business who is representing the Applicant.

Name of person			
Organisation			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

1. Coverage

1.1 What is the name of the modern award to which the application relates?



Include the Award ID/ Code No. of the modern award

Security Services Industry Award 2010 MA000016

1.2 What industry is the employer in?

Security

2. Application

2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

- a determination varying a modern award
- a modern award
- a determination revoking a modern award

2.2 What are the details of your application?

Amend clause 15.11 Other Matters.

15.11 Other Matters

(b) Uniform

~~(Delete) Where an employee is required to wear a uniform the employer must provide the employee with the uniform or reimburse the employee for the cost of the uniform.~~

(b) Uniform

(Insert) Where an employee is required to wear a uniform including boots or other required footwear, as part of the employer's uniform policy, code of dress or corporate clothing or otherwise, the employer must provide the employee with those items specified by the employer's uniform policy, code of dress or corporate clothing or reimburse the employee for the cost of purchasing the items.

A uniform will include but is not limited to shirt or blouse, pants or dress and shoes or boots.

Attach additional pages, if necessary.

2.3 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.



You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective as well as any additional requirements set out in the FW Act.

1. Under current Security Industry Award there is no definition of what a uniform is or what items make a uniform. By including the words “uniform policy, code of dress or a corporate clothing” and “A uniform will include but is not limited to shirt or blouse, pants or dress and shoes or boots” there is not a need to identify every individual items of clothing.
2. Many employers have a dress code or uniform policy but this is not reflected in the Security Industry Award. Items of clothing with the company’s logo or insignia are almost universally recognized as forming parts of the uniform. But unmarked items such as pants and shoes are not.
3. The variation will bring the Security Industry Award into line with many other Awards that already specify what clothing is covered under their industry.

For example

Airport Employees Award

Where an employer requires an employee to wear any special clothing such as uniforms, protective clothing, footwear, safety glasses or other equipment, the employer must reimburse the employee for the cost of purchasing such special clothing.

Gardening and Landscaping Services Award 2010

Where an employee is required to wear protective clothing (e.g. oilskins, gumboots, overalls, goggles, safety boots, bowling shoes etc.), the employer must reimburse the employee for the cost of purchasing such special clothing and equipment. The provisions of this paragraph do not apply where the clothing and equipment is paid for by the employer.

Hospitality Industry (General) Award 2010

Where the employer requires an employee to wear any special clothing such as coats, dresses, caps, aprons, cuffs and any other articles of clothing, the employer must reimburse the employee for the cost of purchasing such special clothing. The provisions of this clause do not apply where the special clothing is paid for by the employer.

Where it is necessary that an employee wear waterproof or other protective clothing such as waterproof boots, aprons, or gloves, the employer must reimburse the employee for the cost of purchasing such clothing. The provisions of this clause do not apply where the protective clothing is paid for by the employer.

Marine Towage Award 2010

For each employee covered by this award who is required to wear industrial or protective clothing and equipment as stipulated by a relevant law or by the employer, the employer must reimburse the employee for the full cost of purchasing the industrial or protective clothing and equipment. The provisions of this subclause do not apply where the industrial or protective clothing and equipment is, or has been, paid for or provided by the employer and the employer replaces items on a fair wear and tear basis.

Passenger Vehicle Transportation Award 2010

If an employee is required by their employer to wear a uniform, including boots or other required footwear, and the uniform is not provided by the employer, the employee will be reimbursed for all reasonable and necessary costs incurred in purchasing that uniform.

4. By amending clause 15.11 of the Security Industry Award it does not go against any of the Modern Award Objectives.

Attach additional pages, if necessary.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	C.Gavin
Name	Christian Gavin
Date	10/07/2019
Capacity/Position	



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS