

Fair Work Act 2009
s.156 - 4 yearly review of modern awards
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AM2014/226

**Exposure Draft – Electrical Power Industry Award – Drafting and Technical
Issues**

**Submissions of the Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Services Union of Australia
(CEPU)**

- 1 These submissions are filed in accordance with the Directions issued by Justice Ross on 22 March 2016.
- 2 The CEPU has read the separate submissions of the CFMEU in respect of casual employment and leave loading in this matter and AM2014/220 Coal Export Terminals Award 2010. The CEPU supports those submissions.
- 3 The CEPU notes that the proceedings in AM2014/196 Part-time employment provisions and AM2014/197 casual employment provisions may affect the provisions in the Electrical Power Industry Award 2010. That said we do agree with the observations of the CFMEU in their submission directed solely to this draft that as there are no all-purpose payments in this award the term 'minimum rate of pay' in sub-clauses 6.5(e). In clause 14.7 the use of the term 'ordinary' is superfluous, or perhaps should be replaced with 'minimum'.
- 4 The Parties are asked about Clause 9—Breaks, "Parties are asked to clarify the interaction between clauses 9.6 and 9.4. Does clause 9.4 only apply to shiftworkers and 9.6 to day workers?" For convenience the clauses are extracted below:

9.4 Work which is continuous with ordinary hours

(a) An employee who is required to work overtime for not less than two hours but not more than four hours before or after working ordinary rostered hours will receive a crib break of 20 minutes during that overtime which will count as time worked. A meal will be provided by the employer or a meal allowance will be paid in accordance with clause 11.3(a).

(b) Where the overtime is to continue for more than four hours (and after each subsequent four hours) the employee will receive a crib break of 20 minutes which will count as time worked. A meal will be provided by the employer or a meal allowance as per clause 9.4(a).

...

9.6 Rest breaks during overtime

(a) An employee may take a paid rest break of 20 minutes after each four hours of overtime worked if the employee is required to continue to work after the rest break.

(b) An employer and an employee may agree to any variation of this clause to meet the circumstances of the workplace, provided that the employer is not required to make any payment in excess of or less than what would otherwise be required under this clause.

- 5 The CEPU answers the question negatively. We submit that the clauses are not mutually exclusive. Clause 9.4 applies to overtime being worked which is worked directly after a shift, or the ordinary hours that are worked in a day. For this reason it includes the benefit of a meal being provided or a meal allowance. Clause 9.6 on the other hand would apply in circumstances where a worker works a period of overtime which does not directly follow their shift, or the ordinary hours that they have worked in a day (and is not subject to call back). For this reason it does not contain a meal allowance, or the provision of a meal. Examples of this would include a day worker, whose usual hours are worked Monday to Friday, having to work a period of overtime over the weekend.
- 6 If clause 9.4 were only to apply to shift workers it would mean that day workers would miss out on the entitlement to a meal or a meal allowance once they work more than two hours overtime following the completion of their normal working day.
- 7 Parties are asked to confirm whether clause 9.7(d) is correct. The CEPU's position is that it is correct. It accords with the pre-modern award, where the practice was generally for 8 hour breaks for shift workers and 10 hour breaks for day workers.
- 8 Parties have been asked to make submissions regarding how clause 11.2—Availability Allowance applies. The CEPU concedes that the drafting of the provision is not particularly clear and that it might benefit from rewording and/or use of an example. (It was actually clearer and more comprehensive in the pre-modern instrument on which it was based.¹) Again however, the CEPU, has had the benefit of reading the CFMEU's submissions on this matter and supports those submissions.
- 9 Parties are asked to clarify when overtime is payable and whether each day stands alone.

¹ See for example AP793302 - Power and Energy Industry Electrical, Electronic & Engineering Employees Award 1998

10 The CEPU submits that the table at 13.1 is clear, though believes the question is primarily directed to day workers and when overtime is payable. For convenience the table is reproduced below:

(a) Overtime is payable at the following rates:

		% of minimum hourly rate
Monday to Saturday—day workers and non-continuous shiftworkers	First two hours	150
	After two hours	200
Monday to Saturday—continuous shiftworkers		200
Sunday		200
Public holiday		250

(b) Day workers who work overtime on a Saturday, a Sunday or a public holiday will receive a minimum payment of three hours on each occasion.

11 Day workers will generally work Monday to Friday between the span of 7.00 am to 6.00 pm with an average of 37.5 hours a week. (See 8.1.) Day workers may work 7 hours 30 mins per day over a 10 day fortnight or 8 hours 20 mins over a 9 days fortnight with a rostered day off. It is also possible that a day worker may work 10 ordinary hours per day (8.1(c)).

12 Any work they do beyond their ordinary hours on any day that is Monday to Friday will entitle them to payment of 150% for the first two hours and 200% thereafter. Each day that such overtime is worked is counted separately – it stands alone.

13 The table makes it clear that if a day worker works a day other than Monday to Friday, the work that they do on that day will attract a higher rate (as listed) than their ordinary hourly rate and attract a minimum payment of three hours even if three hours are not actually worked.

14 Parties are asked to clarify the interaction of clauses 14.3(a) and 10.7(b). Clause 10.7(b) does not state that the higher duties must resume after the period of leave. Clause 10.7(b) reads:

(b) Where an employee has performed higher duties for three months continuously prior to a period of annual leave, personal/carer's leave or

a period attracting accident pay, the leave or accident pay will be based on the employee's higher duties rate.

15 Clause 14.3(a) reads:

14.3(a) An employee receiving an allowance on a continuous basis will continue to receive the allowance on all annual leave, subject to, in the case of higher duties allowance in clause 10.7, the employee resuming higher duties on completion of the leave.

16 The CEPU submits there is not necessarily a contradiction between the clauses although recognises that being paid a higher rate of pay for the performance of higher duties does not properly constitute an allowance. Clause 14.3 talks about receiving an allowance on a continuous basis - the allowance on all annual leave. For it to continue to apply to an employee who was entitled to a higher duties rate for a period of their annual leave entitlement they must resume those higher duties on their return to work for it to apply to any future annual leave entitlement they may accrue. If they do not return to the higher duties they were performing prior to taking annual leave, their entitlement to payment for annual leave will accrue at their usual rate, not the higher duties rate. The use of the words 'subject to,' clearly means that it will be conditional on a resumption of performance of those higher duties. It will depend on the facts in any given case.

17 In respect of personal/carer's leave and compassionate leave the parties are asked to clarify whether the supplemented entitlement to 12 days leave in clause 15.2 applies only to personal leave or personal/carer's leave.

18 The CEPU submits that the supplemental entitlement would apply to both personal and carer's leave. Such a reading we suggest would better align with the way the entitlement is expressed at section 97(a) and (b) of the FW Act.

19 In respect of the questions relating to AQFs the CEPU asks that we be permitted to comment at a later stage as we are still awaiting feedback in respect of this issue.

END