

Fair Work Commission
Level 10, Terrace Tower, 80 William Street
EAST SYDNEY NSW 2011
Via email: AMOD@fwc.gov.au

5 April 2018

Re: AM2014/247 Sugar Industry Award 2010

BACKGROUND

1. On 2 March 2018, Deputy President Asbury published Directions requiring parties to file a document that reflects a consensus position identifying if outstanding issues:
 - 1.1. are agreed;
 - 1.2. are not agreed but the parties believe are capable of being agreed in further conciliation; and
 - 1.3. are not agreed and will require arbitration.
2. This submission of the Australian Workers' Union (**AWU**) responds to that direction.

MEETINGS

3. In accordance with the Directions published on 2 March 2018, the relevant parties have participated in two teleconferences and related written correspondence.
4. The teleconferences were held on 16 March 2018 and 29 March 2018 and were attended by representatives of:
 - 4.1. The AWU;
 - 4.2. The Australian Manufacturing Workers' Union (**AMWU**);

- 4.3. The Electrical Trades Union (**ETU**);
 - 4.4. The National Farmers' Federation (**NFF**); and
 - 4.5. The Australian Sugar Milling Council (**ASMC**).
5. As a result of the above teleconferences, the relevant parties have reached in principle agreement on a number of issues.
 6. Each outstanding issue is considered in turn below.

OUTSTANDING ITEMS

Item 6 – Coverage and Definition Clause Inconsistencies

7. The parties have reached in principle agreement for this item as per the proposal below.
8. The parties believe that the main concern of the Full Bench regarding the inconsistency between the coverage clause and the definitions clause is that it is assumed that an employee or employer would refer to the definitions clause to determine which stream of the Award they are covered by. For that reason, the definitions and coverage clauses should ideally use consistent language.
9. Notwithstanding that the proposal below does involve modest amendments to the coverage clause, the intent of all parties is that these amendments are purely for drafting purposes and current coverage of the award is not affected in any way.
10. The parties propose the following amendments (additional words in red):

2. Definitions

bulk terminal operations is defined at clause 4.2(e). The terms and conditions of bulk terminal operations employees are found at Part 6 of this Award.

distillery sector is defined at clause 4.2(d). The terms and conditions of distillery sector employees are found at Part 5 of this Award.

field sector is defined at clause 4.2(a). The terms and conditions of field sector employees are found at Part 4 of this Award.

milling sector is defined at clause 4.2(b). The terms and conditions of milling sector employees are found at Part 5 of this Award.

refinery sector is defined at clause 4.2(c). The terms and conditions of refinery sector employees are found at Part 5 of this Award.

4. Coverage

4.2 In this award **sugar industry** means the following:

(a) **field sector:** all sugar cane farming operations including the operations of contractors performing general farm work, cane harvesting and haul out work and farm management; cane testing; and pest, disease control, advisory and research operations of Cane Protection and Productivity Boards and the Bureau of Sugar Experiment Stations;

(b) **milling sector:** sugar milling including the following operations of the sugar miller: **operations of transporting and processing cane including** cane railway construction, maintenance, repair and operation; factory maintenance, repair and operation; raw sugar refining at a sugar mill; by-product manufacture and processing at a sugar mill; and packaging operations performed at a sugar mill;

(c) **refinery sector:** refining raw sugar at sugar refineries and those refineries' **own packaging and storage** operations;

(d) **distillery sector:** distilling **operations of** sugar by-products for industrial purposes and packaging work in a distilling operation directly linked to a sugar mill;

(e) **bulk terminal operations:** bulk (packed or loose) receipt, storage, outloading and ship loading at the industry's bulk terminals, including handling incidental commodities or material; and

(f) the generation and/or transmission of power and/or steam that is ancillary or incidental to the employer's activities in clauses [4.2\(b\)](#) to [\(d\)](#) (albeit that excess power may be sold into the grid).

Item 11 – Facilitative Provisions

11. The parties have reached in principle agreement for this item as per the proposal below.

12. The parties believe that the clauses in the following table are facilitative provisions and as such may be included in the facilitative provisions table at clause 6.2 of the Exposure Draft.

Clause	Provision	Agreement between an employer and:
7.4(g)	Casual Conversion	An individual

7.4(j)	Casual conversion—period of employment	An individual or the majority of employees
11.2(d)(iv) and 11.3(c)(iv)	Rostered days off—substitution of days	An individual
11.2(d)(v) and 11.3(c) (v)	Rostered days off—banking of days	An individual
11.3(a)	<i>Averaging of weekly ordinary hours – exceeds 28 days</i>	<i>The majority of employees</i>
11.3(c)	Altering spread of hours	An individual or the majority of employees
12.1(e)	<i>Rest breaks</i>	<i>The majority of employees</i>
12.4(d)	Rest breaks	The majority of employees
19.1(c)	Payment of wages—frequency	The majority of employees
25.6	Time off instead of payment for overtime	An individual
25.7	Make-up time	An individual
26.1(b)	<i>Averaging of weekly ordinary hours – shiftworkers – exceeds 28 days</i>	<i>The majority of employees</i>
26.9(a)	<i>Nominal crushing season – shiftwork – hours of work</i>	<i>The majority of employees</i>
26.10(a)	<i>Nominal slack season – shiftwork – reducing length of shift</i>	<i>The majority of employees</i>
26.10(d)	<i>Rostered day off</i>	<i>Unclear – but likely the majority of employees.</i>
26.10(f)	<i>Nominal slack season - shiftwork - Rostered days off - banking of days</i>	<i>The majority of employees</i>

Item 13 – Seasonal Employment

13. The parties have not yet reached in principle agreement for this item. However, the parties believe that this matter could be agreed with further conciliation conducted by the Fair Work Commission.

14. The AWU notes that the parties have largely reached agreement on an *approach* to solving the current seasonal employment definition having cross-purposes.

15. However, parties have not yet agreed to which sectors of the sugar industry seasonal employment applies. The AWU believes that this matter is likely to be resolved through conciliation.

Items 17 & 34 - Piecework

16. The AWU notes that the NFF continues to press its claim to reduce the piecework rate under the award, and that the AWU continues to oppose this claim.

17. This item will require arbitration.

Item 42 – Apprentice Tool Allowance

18. The AWU notes that the AMWU, supported by the AWU and the ETU, continues to press its claim to introduce a tool allowance for apprentices under the award.

19. This item will require arbitration.

Item 47 – Hot Work Allowance

20. The parties have reached in principle agreement for this item as per the proposal below.

21. The AWU notes that as this allowance does not apply in the field sector, the NFF is not an interested party for this item.

22. The parties agree that the following allowances are *not* payable in addition to the hot work allowance at 16.1(t) of the Exposure Draft:

- 22.1. 16.1(c) – Bagasse Bins
- 22.2. 16.1(d) – Boiler Cleaning—Engine Driver
- 22.3. 16.1(m) – Confined Spaces
- 22.4. 16.1(aa) – Repair Work
- 22.5. 16.1(dd) – Work in Rain

23. Additionally, the parties agree that the exclusion in 16.1(t)(iv) of the Exposure Draft is cumbersome and requires redrafting. The parties have not yet agreed

upon a proposal to amend 16.1(t)(iv). However, this is only due to time restraints. Agreement on an amended clause is certainly possible and quite likely.

Item 50 – Schedule D.2

24. The parties have reached in principle agreement for this item as per the proposal below.
25. The parties agree that the rates in the tables in Schedule D.2 of the Exposure Draft are not entirely accurate, as the rates under each column titled, “100%” are based on a 38-hour divisor, and do not take into account that 36- and 40-hour divisors are used in the sugar industry.
26. The parties further agree that penalty rates are always calculated on the 38-hour divisor rate of pay. Therefore, all figures in the tables in Schedule D.2 are accurate *except* for the “100%” columns.
27. The parties propose that a note is inserted in each relevant table that the rates listed in the columns titled, “100%” may not be applicable to all employees at all times, cross-referencing clause 15.3 of the Exposure Draft. The note should also address that the rates in the other columns are accurate for all employees, regardless of divisor.

Item 62 – Schedule D

28. The NFF has confirmed that it will withdraw this item.

Item 63 – Schedule D.3.1

29. The parties have reached in principle agreement for this item as per the proposal below.
30. The parties agree that the table at D.3.1 is both unclear and inaccurate regarding overtime rates.
31. For bulk terminal operation employees, *all hours* worked outside of in excess of ordinary hours attract a penalty rate of 200%. This entitlement is found at clause 25.3 of the Exposure Draft. The table at Schedule D.3.1 does not reflect this and should be amended accordingly.
32. The heading, “Monday to Friday” is incomplete, as the rates listed below are for *overtime* Monday to Friday.

33. The parties propose that:
- 33.1. the column titled, “150%” is not applicable and must be deleted;
 - 33.2. the headings, “First 3 hours” and “After 3 hours” are not applicable and must be deleted; and
 - 33.3. the heading, “Monday to Friday” should read, “Monday to Friday – overtime”.

Item 64 – Schedule D.3.2

34. The parties have reached in principle agreement for this item as per the proposal below.
35. The parties agree that the heading of this schedule should state that the rates in the table are for shiftworkers only, and that the heading of the fourth column, “Other than day shift” is confusing and does not accurately reflect the award provisions.
36. The parties propose that:
- 36.1. The word, “employees” in the heading of Schedule D.3.2 should be replaced with the word, “shiftworkers”; and
 - 36.2. The heading of the fourth column in the table, “Other than day shift” should be replaced with, “Continuous afternoon or night shift or no rotation to day shift”.

Item 64A – Schedule D.3.3

37. The AWU will withdraw this submission.
38. Although the rates listed in this table are applicable to *all* bulk terminal operation employees and not just shiftworkers, once Schedule D.3.1 is amended, the correct rates of pay for employees other than shiftworkers will be located in that Schedule and there is no need to amend the heading of Schedule D.3.4 to have a more general application.

Item 64B – Schedule D.3.4

39. The parties have reached in principle agreement for this item as per the proposal below.
40. This matter is similar to Item 63 above, and therefore the parties make a similar proposal:

- 40.1. the column titled, "175%" is not applicable and must be deleted;
- 40.2. the headings, "First 3 hours" and "After 3 hours" are not applicable and must be deleted; and
- 40.3. the heading, "Monday to Friday" should read, "Monday to Friday – overtime".

Item 64C – Schedule D.3.5

41. The parties have reached in principle agreement for this item as per the proposal below.
42. This matter is the same as one of the issues in Item 64 above: the heading, "Other than day shift" in the fourth column is misleading and inaccurate.
43. The parties propose that:
 - 43.1. The heading of the fourth column in the table, "Other than day shift" should be replaced with, "Continuous afternoon or night shift or no rotation to day shift".

Yours faithfully,



Zachary Duncalfe
NATIONAL LEGAL OFFICER
The Australian Workers' Union