



IN THE FAIR WORK COMMISSION

Matter No: AM2014/254

Fair Work Act 2009

Section 156 – 4 yearly review of modern awards

Airline Operations – Ground Staff Award 2010

Submission of AMWU

21 July 2016

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Background

1. On 10 May 2016 the President, Justice Ross published a Statement and Directions regarding a plain language pilot and Group 4 awards.
2. The Directions require the filing of submissions in reply on the technical and drafting issues in Group 4A, B and C exposure drafts by 21 July 2016.
3. The AMWU's submissions in reply regarding the exposure draft for the Airline Operations – Ground Staff Award 2016 (Airlines Exposure Draft) appear below.
4. Unless indicated otherwise below we support the submissions in this matter of the AWU dated 30 June 2016 and the ASU dated 30 June 2016.

Drafting and technical issues

Clause 2 Definitions

5. Support AWU submission regarding the duplication of a definition of "Airline Operations Industry" and preference for the definition to be included only at 4.2.
6. Agree with AI Group that reference to '18.3' in definition of 'ordinary hourly rate' should be replaced by '18' to ensure reference is to all classifications and not only maintenance classifications at 18.3

Clause 7 Facilitative Provisions

7. 7.3 Facilitation by majority or individual agreement

The table should be amended as follows:

Clause Number	Provision	Reason
14.2(c), 14.2(d), 14.2(f)	Ordinary hours of work - day work on weekend	14.2(c) and (d) are majority provisions and listed in Clause 7.4 Majority agreement reflecting current

		clause 8.4 re 28.2(d) and 28.3(e)
15.1(a)	Ordinary hours of work- method of arranging ordinary working hours	Reflects current application to whole clause at 28.4
16.1(d)(b)	Meal Break- day work	16.1(d) is a majority only provision as per current 29.1(b) and should be relocated at 7.4. 16.1(b) enables day worker/s to agree to work 6 hours without a break
16.2(e)(c)	Meal Break- shift work	16.1(e) is a majority provision as per current 29.2(c) and should be relocated to 7.4. 16.2(c) enables a shift worker/s to work 6 hours without a meal break

7.4- Facilitation by majority agreement

8. Insert 16.1(d)-Rostered Days Off- day work and 16.2(e)- Rostered Days Off- shiftwork in Table 7.4.

10.2(b)- Part Time Hours

9. Support paragraph 6 of the AWU submission dated 30 June, 2016.

Clause 11- Casual Employment

- 10.** The amendments at 11.1 make the award easier to understand. Replacing “as such” with “on a casual basis” reflects the engagement. An employee is never a “such” but a full, part or casual employee under the Award.
- 11.** The AI Group argues¹ that the wording at 11.2 increases the rate of pay for a casual employee. The issue of how the rate of pay for a casual is to be expressed was determined in the Group 1 process. There is nothing distinguishing casuals engaged under the Airlines Operations Ground Staff Award award warranting a different formula.
- 12.** This issue was determined in the September 2015 decision² in which the bench said:
- [110]** The general approach will remain as expressed in the exposure drafts, namely that the casual loading will be expressed as 25% of the ordinary hourly rate in the case of awards which contain any all purpose allowances, and will be expressed as 25% of the minimum hourly rate in awards which do not contain any such allowances.
- 13.** The Airlines Exposure Draft contains all-purpose allowances specified at Clause 19.7(a) and tool allowance at Clause 19.9(b). The Airlines Exposure Draft reflects the appropriate expression for calculating a casual employee’s rate of pay.
- 14.** The AI Group has not established a case for departing from the general approach previously determined. Our submissions³ regarding the same issue raised by AI Group in the context of the Manufacturing and Associated Industries and Occupations Award 2010 are relevant and we incorporate them into this submission.

¹ AIG submission Group 4A-4C, 30 June 2006 (the AIG submission) Paras 224-226

² [2015] FWCFB 6656

³ AMWU Submission AM2014/75, 13 December 2015, paragraphs 31-27

15. We support the clarification sought by the AWU⁴ to Clause 11.3 regarding minimum daily hours for casual employees on each occasion worked.

Clause 14.2(c) Ordinary Hours of Work- Day Work

16. The opening sentence should be amended to import the consultation requirement at Clause 31 re change of hours. Reference to the requirement for an employer to consult regarding changes to roster and hours is evident at Clause 10.2(b) regarding the hours of part-time workers and at Clause 17.2(b) regarding shiftwork rosters. An employer's right at Clause 14.2(c) is tempered by Clause 31. An inclusion of reference to clause 31 will make the award easier to understand and apply. The AMWU proposes the following amendment:

14.2(c) The ordinary hours of work are to be worked continuously, except for meal breaks at the employer's discretion, subject to Clause 31, of the employer between 7.00am and 6.00pm.

Clause 15.1(a)- Rostering Arrangements

17. Support the submission of the AWU⁵ regarding retention of current text (28.4(a) in lieu of 15.1(a) of the exposure draft. The current clause has an emphasis toward the majority. The exposure draft is confusing, for example the first exception at Clause 15.1(a)(i) relates to clause 14.2(c) where agreement to vary the spread of hours can only be made with a majority of employees.

18. Many of the rostering provisions can only be made with a majority. Majority agreement is a safeguard and it is appropriate that the safety net maintain that emphasis.

19. We disagree with the AWU regarding the reference to Clause 14.2(c) in Clause 15.1. The current reference is appropriate as beyond the two express limitations recorded at clause 15.1(a) (i) and (ii) the arrangement of ordinary hours is to be by agreement.

⁴ AWU submission 30 June 2016, paragraph 7.

⁵ Ibid @ paragraph 9

Clause 17.4 Permanent Night shift

20. For consistency and clarity the AMWU proposes that a heading “Permanent Night Shift” be included above Clause 17.4. Alternatively the table at Clause 17.3 could be amended to include permanent night shift as follows and clause 17.4 deleted:

Night Shift	Permanent ordinary hours on night shift (refer Clause 17.1(d)	130%
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Clause 17.6 Multiple shift allowance

21. The AMWU supports the submission of the ASU at paragraph 16. The deficiency is corrected by the following amendment :

17.1(b) for the fourth and subsequent shifts- **in addition to the amount at 17.1 (a), an additional** \$4.41 per starting time

Clause 19.7 Maintenance and engineering workers- wage related allowances

22. The reference at 19.7(a)(iii) to ‘(clause 19.7(d)’ should be to ‘19.7(e)’.

23. Parties were asked to confirm the reference to CAO 104.1.3.2 at 19.7(e)(i) dot point 3. CASA has advised that CAO 104.1 was repealed about 15 years ago. The AMWU has sought further information from CASA as we are advised that CAO 104.1 may still be relevant for CAR 1988 operated aircraft.

Schedule B.2-B9

24. The AIG identify a concern regarding the wage tables expressing minimum rates and the potential for underpayment where an applicable all purpose allowance is

not included. The AIG acknowledge the description of ordinary hourly rate at B.1.

The AIG’s concern could be alleviated by :

Option 1 – adding “refer to B.1.1” in all table rows following “% of ordinary hourly rate”;

Option 2- adding “ (add relevant all purpose allowances from 19.7(a) and 19.9(b)) in all table rows following “% of ordinary hourly rate)”

Schedules B.2.4, B.3.4, B.4.4 and B.5.4- Overtime

25. We support the AWU submission⁶ regarding the rate to be paid to shiftworkers other than continuous shift workers on Sunday. We agree the rate is 200% for all time worked on Sunday. Another column is required to reflect the Sunday overtime rate in the relevant tables and the heading amended as appears in the example below.

B.4.4 Full-time and part-time maintenance and engineering employees including shiftworkers- overtime rates

Day Workers			Shiftworkers (except continuous shiftworkers)			Continuous shiftworkers
Monday to Saturday		Sunday	Monday to Sunday Saturday		Sunday	Monday to Sunday
First 2 Hours	After 2 hours	All hours	First 2 hours	After 2 hours	All hours	All overtime hours
% of ordinary hourly rate						
150%	200%	200%	150%	200%	200%	200%

⁶ AWU submission, paragraph 25.

- 26.** Clause 28.2(g) of the Award (14.2(g) of the exposure draft) provides for day workers to receive 200% for all ordinary hours worked on a Sunday. Clause 33 of the Award (24.2 of the exposure draft) provides that day workers receive 200% for all time worked on Sunday, including both ordinary and overtime hours.
- 27.** Clause 30.7(a) of the Award, (17.7(a) of exposure draft), provides that all shiftworkers must be paid a shift penalty rate of double time for time worked on Sunday.
- 28.** Clause 32.1(a) of the Award, (23.1(a) of the exposure draft) provides day and shift overtime rates as time and half for the first 2 hours and double time thereafter. For continuous shiftworkers the rate for working overtime is double-time.
- 29.** The exposure draft recognises Clause 33 provides a double rate for all time worked by day workers on a Sunday as recognised in the relevant schedules despite there being no specific reference to a Sunday rate for overtime in Clause 32.1(a). In a similar way the exposure draft should recognise that Clause 30.7(a) provides shiftworkers, continuous and non continuous with a rate of 200% for time worked on Sunday.

Schedules B.6-B.9- casual rates

- 30.** The schedules do not contain overtime rates for casuals. Casual employees are not excluded from overtime and the tables should be amended to identify overtime rates payable.

END