

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

26 April 2018

Re: [2018] FWCFB 1548 – AM2014/250 and others

BACKGROUND

1. The Full Bench of the Fair Work Commission ('**FWC**') published the *4 yearly review of modern awards – Award stage – Group 4 awards (AM2014/250 and others)* Decision¹ ('**Decision**') on 21 March 2018.
2. Throughout the Decision, the Full Bench has invited parties to file submissions on a number of outstanding matters and provisional views.
3. Of the Awards to which this feedback has been invited, the Australian Workers' Union ('**AWU**') is an interested party in the following:
 - 3.1. *Airline Operations – Ground Staff Award 2010;*
 - 3.2. *Amusement, Events and Recreation Award 2010;*
 - 3.3. *Dry Cleaning and Laundry Industry Award 2010;*
 - 3.4. *Food, Beverage and Tobacco Manufacturing Award 2010;*
 - 3.5. *Funeral Industry Award 2010;*
 - 3.6. *Pest Control Industry Award 2010;*
 - 3.7. *Plumbing and Fire Sprinklers Award 2010;* and
 - 3.8. *Water Industry Award 2010.*
4. The submissions of The Australian Workers' Union ('**AWU**') are below.

¹ [2018] FWCFB 1548

² *Fair Work Act 2009 (Cth), s134(da)(i)*

³ [2017] FWCFB 3177 at [34]

⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014269-sub-awu-090517.pdf>

Airline Operations – Ground Staff Award 2010

Item 15 – Ordinary Hours of Work – Day Work

5. The AWU supports the provisional view of the Full Bench at [98].
6. The AWU has had the opportunity to read the latest submissions of the Australian Manufacturing Workers' Union ('**AMWU**') on this matter, and supports the additional cross-reference at clause 14.3(b) as proposed.

Item 41 - Overtime

7. The AWU is not opposed to the provisional view of the Full Bench at [110].

Item 48 – Overtime Rates for Shiftworkers

8. The AWU notes that this issue has been referred to the list of substantive matters.
9. The AWU submits that this issue is technical and drafting in nature, as it concerns an inconsistency between the content of two clauses in the Award. The AWU believes this inconsistency is quite easily resolved.
10. Clause 30.7(a) of the *Airline Operations – Ground Staff Award 2010* states that shiftworkers are to be paid at double time for work on Sunday. The clause does not differentiate between continuous and non-continuous shiftworkers, or between ordinary hours and overtime hours. The clause entitles all shiftworkers covered by this award to double time for all work performed on Sunday.
11. Clause 32.1(a) of the *Airline Operations – Ground Staff Award 2010* states that the rate payable for all overtime for *continuous* shiftworkers is double time. For all other employees, the rate for working overtime is time and a half for the first two hours and double time thereafter.
12. The tension between these clauses is introduced when clause 32.1(a) is relied upon to attempt to deny a non-continuous shiftworker his or her entitlements under clause 30.7(a).
13. Not only would the entitlement in clause 32.1(a) prevailing over the entitlement in clause 30.7(a) in this circumstance result in a complete nonsense whereby a non-continuous shiftworker who performs overtime on a Sunday is remunerated *less* for the inconvenience and disutility of working overtime hours, it would also result in a *general* overtime clause prevailing over a *specific* shiftwork provision.

14. The AWU notes that the Modern Awards Objective specifically refers to the provision of *additional* remuneration for employees working overtime². For an Award to provide a *lesser* rate for an employee for overtime work in comparison with ordinary hours is not only illogical, but also contrary to the Modern Awards Objective.
15. The AWU does not agree that any of the above warrants this issue to be referred to the list of substantive matters for this Award.
16. The relevant columns in Schedule B of the Exposure Draft for the *Airline Operations – Ground Staff Award 2010* are incorrect by virtue of the drafting process. This can easily be dealt with as a technical and drafting issue, as can clarifying the words used in clause 32.1(a) to prevent the current dispute from reoccurring.

Amusement, Events and Recreation Award 2010

Item 18 – Sunday and Public Holiday Work

17. The AWU supports the provisional view of the Full Bench at [197].

Dry Cleaning and Laundry Industry Award 2010

Item 19 – Recall to Work Overtime

18. Although the AWU maintains that the use of the word, “home” in the recall to work overtime clause is outdated and should be removed from the Award, the AWU will not be pursuing this as a substantive variation at this time.

Item 21 – Time Off Instead of Payment

19. The AWU supports the provisional view of the Full Bench at [350].
20. However, as pointed out by United Voice in its latest submission, the clause proposed by the Full Bench at [350] requires further amendment regarding its application to work performed on a Saturday, Sunday or Public Holiday.

² *Fair Work Act 2009 (Cth), s134(da)(i)*

Item 22 - Definitions

21. Although the AWU maintains its position regarding the proposal put forward to amend the Definitions clause, the AWU will not be pursuing this as a substantive variation at this time.

Item 31 – Full-time and Part-time Adult Laundry Employees

22. The AWU supports the provisional view of the Full Bench at [362].

Food, Beverage and Tobacco Manufacturing Award 2010

Item 25 – Casual Employment

23. The AWU notes that this item was not dealt with in the Decision as a number of parties, including the AWU, had accepted the proposal by the Australian Industry Group ('AIG') that the word "ordinary" be replaced with "minimum" each time it appears in clause 10.2(a) of the Exposure Draft for the *Food, Beverage and Tobacco Manufacturing Award 2010*.

24. The AWU previously consented to the amendment proposed by AIG on the basis that the cross-referenced clause 14 did not specify ordinary hourly rates, but minimum hourly rates.

25. Having now seen the amended clause, the AWU notes that the amendment proposed by AIG, although addressing that minor inconsistency, may result in a casual employee who receives an all-purpose allowance under this Award being paid less than what they are currently entitled to.

26. As this Award has a number of all-purpose allowances, the AWU submits that the word "ordinary" is the correct terminology to use in the above clause. The method of calculating a casual employee's casual loading in Awards with all-purposes allowances is settled – it is on the casual employee's ordinary hourly rate³.

27. Replacing the word "ordinary" with "minimum" has the potential to effect the entitlements of casual employees covered by this Award, and is inconsistent with previous Full Bench Decisions.

³ [2017] FWCFB 3177 at [34]

Funeral Industry Award 2010

Item 12 – Overtime for Shiftworkers

28. The AWU does not support the provisional view of the Full Bench at [453].
29. The AWU has filed thorough submissions regarding this issue⁴ and continues to rely on those submissions.
30. The AWU maintains that the use of the word “applicable” when referring to overtime for shiftworkers and the word “minimum” when referring to overtime for day workers evinces a clear intention in the Award that overtime penalties for shiftworkers are calculated on the *whole* rate that applies to the shiftworker, which *includes* the shift penalty.
31. The effect of the provisional view of the Full Bench is that non-continuous shiftworkers will be paid the *same rate of pay* for the first three hours of overtime worked as they receive for ordinary hours. This cannot be the intended effect of the Award, as this:
- 31.1. Effectively increases the daily ordinary hours for a non-continuous shiftworker by an additional three hours, which, as shiftworkers are not permitted to work more than 10 hours per shift, denies non-continuous shiftworkers the benefit of daily overtime; and
- 31.2. Is counter to the Modern Awards Objective, specifically the provision of additional remuneration for employees working overtime⁵.

Items 15 & 16 – Overtime

32. The AWU supports the provisional view of the Full Bench at [475] regarding the application of the minimum engagement provision for casual employees.
33. However, the AWU does not support the provisional view of the Full Bench at [472] regarding the application of the minimum engagement provision for part-time employees.
34. The AWU maintains that the minimum engagement provisions specific to recalls and removals provide protection for full-time employees only, as full-time employees do not have a general minimum engagement provision in this Award.

⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014269-sub-awu-090517.pdf>

⁵ *Fair Work Act 2009 (Cth), s134(da)(i)*

35. Part-time and casual employees, however, do have general minimum engagement provisions in this Award, and the AWU submits that as these provisions are general in nature, they are to be observed for all purposes. This includes for the purposes of recall to work and removals.
36. The provisional view of the Full Bench regarding the application of the minimum engagement provision for part-time employees introduces an inconsistency in respect to part-time employees' minimum engagements under this Award.

Item S8 – Penalty Rates

37. The AWU supports the provisional view of the Full Bench at [490].

Item S9 - Overtime

38. The AWU wishes to pursue this matter as a substantive change.
39. The AWU submits that it is a minor change that can be determined on the papers with little formality.

Item 16A – Removals and Shiftwork

40. The AWU accepts the provisional view of the Full Bench at [499].

Pest Control Industry Award 2010

Item 2 – Meal Allowance

41. The AWU submits that the allowance in clause 17.3(c)(iv) is still of some practical application and should not be removed from the *Pest Control Industry Award 2010*.
42. The AWU notes that the primary basis of the allowance in clause 17.3(c)(iv) being considered redundant by the Full Bench is that the allowance in clause 17.3(c)(ii) covers the costs of lodging and “all meals”.
43. However, “all meals” could only possibly be intended to remunerate the employee for all meals *once* every day. For example, lunch on Tuesday, dinner on Tuesday night, and breakfast on Wednesday morning. Alternatively, dinner on Tuesday night, breakfast on Wednesday morning, and lunch on Wednesday.
44. In both scenarios above, the employee is being compensated for three meals with the allowance in clause 17.3(c)(ii). However, as country work by definition requires an

employee to travel a certain distance, the employee will still be away from home for at least one meal that the allowance in 17.3(c)(ii) does not provide for. In the scenarios above, that meal would be lunch on Wednesday and lunch on Tuesday, respectively. The allowance in clause 17.3(c)(iv) is payable at these times.

Item 4 – Shiftwork

45. The AWU generally supports the variation proposed by the Full Bench at [568].
46. However, the AWU respectfully submits that the proposed variation still captures the example given by the Fair Work Ombudsman of a day worker finishing at 7:00pm.
47. The AWU suggests that the word, “or” in the amended clause 21.1(a) proposed by the Full Bench is deleted.

Item 5 – Annual Leave – Payment and Loading

48. The AWU is not opposed to the removal of the reference to ‘industry allowance’ in clause 22.3(b) of the Exposure Draft for the *Pest Control Industry Award 2010* on the basis that there is no industry allowance in the Award.
49. The AWU does intend to pursue a substantive variation to substitute the reference to ‘industry allowance’ in clause 22.3(b) of the Exposure Draft with a reference to ‘leading hand allowance’ on the basis that all of the pre-modern instruments referenced to establish the *Pest Control Industry Award 2010* except one provide for the leading hand allowance to be payable on annual leave, as has been outlined in earlier submissions⁶.

Plumbing and Fire Sprinklers Award 2010

Item 7 – Part-time Employment

50. The AWU supports the provisional view of the Full Bench at [595].

Item 12 – Adult Apprentices

51. The AWU does not oppose the provisional view of the Full Bench at [600].

⁶ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014279-sub-awu-160517.pdf>

Water Industry Award 2010

52. The AWU has no outstanding matters in relation to the *Water Industry Award 2010*.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'ZD', with several horizontal strokes underneath.

Zachary Duncalfe
NATIONAL LEGAL OFFICER
The Australian Workers' Union