

FAIR WORK ACT 2009 (Cth)

s. 156 – Four Yearly Review of Modern Awards

DRAFTING and TECHNICAL ISSUES

PLUMBING and FIRE SPRINKLERS AWARD 2016 (AM2014/280)

EXPOSURE AWARD: Technical and Drafting Issues – Clause 18 – Industry Specific Redundancy Scheme

MODERN AWARD REVIEW

SUBMISSION

INTRODUCTION

Fire Protection Association Australia (FPA) is the peak body providing training and developing standards across the Fire Protection industry in Australia and represents some 1500 small to medium sized businesses but also including a few larger businesses.

This is a submission by Fire Protection Association Australia in relation to the current 4-yearly review of Modern Awards and in particular, in connection with Clause 18 – Redundancy, of the *Plumbing and Fire Sprinklers Award 2010*.

BACKGROUND

1. On 25th February 2015, FPA lodged a brief outline of matters of interest with respect the 4-year Modern Award Review – Group 4 Awards (Group 4C) – *Plumbing and Fire Sprinklers Award 2010* (MA000036) (the “Award”). Relevantly, the FPA expressed support the Master Plumbers Association (NSW Branch) (MPA (NSW)) with respect to sub-clause 18.2 – Definition of “Redundancy” to more clearly identify the circumstances surrounding a redundancy situation.
2. This submission does not address other aspects of the clause.

Definitions

3. Specifically, this submission related to the definition of “redundancy” as provide for in the Award. FPA submits that the generally accepted community definition of “redundancy” be applied
4. Clause 18 of the Award defines “Redundancy”: “**18.2 Definition:** *For the purposes of this clause, **redundancy** means a situation where an employee ceases to be employed by an employer other than for reasons of misconduct or refusal of duty. **Redundant** has a corresponding meaning*”.
5. This submission recognises previous decisions of the Tribunal with respect to this matter and the following seeks to provide a summary of such decisions:
 - recognition of the Test case *Termination, Change and Redundancy* (TCR) decision¹ and the introduction of redundancy standards.
 - the reliance and reference to the definition of “redundancy” in the South Australian Supreme Court during the TCR hearing².
 - the reference to when redundancy protection should apply³.
 - the subsequent building and construction industry cases in the late 1980s and early 1990s saw the development of redundancy schemes in the building and construction industry.
 - these included the Full Bench decision with respect to the building awards⁴ (“...many employees work in the building and construction industry for extended periods and are employed by many employers in the normal course of employment”), the Inquiry into the Building Industry⁵, and the decision of Commission Grimshaw⁶.

¹ [1985] 8 IR 34 (2nd August 1984)

² Chief Justice, Mr. Justice Bray in *Reg. v Industrial Commission (SA); Ex parte Adelaide Milk Supply Co-operative Ltd* [1977] 44 SAIR 1202 @ 1205,

³ Op cit - TCR [1985] 8 IR 34 @ 55 - 56

⁴ National Building Trades Construction Award 1975 [1989] 30 IR 1 @ 3(22nd March 1989)

⁵ [1989] 31 IR 450; Print H7460

⁶ Print H9967

- the decision of Commissioner Palmer demonstrates a differing view⁷, that *“There are areas, in my view which must be addressed.... The definition of redundancy needs alteration”*. This decision, on Appeal, was overturned by the Full Bench⁸.
6. From the point of view of sprinkler fitter employees, the circumstances of such employees are considered to be different from those of other employees engaged in the building and construction industry. The importance of the reference to working patterns as stated in the 1989 Full Bench decision [1989] 30 IR 1 @ 3 is then important and so distinguishes sprinkler fitters.

FAIR WORK ACT 2009 (Cth)

7. The **Fair Work Act** provides for **Industry Specific Redundancy Schemes**, at s. 141.
8. Sub-section 141 (1) provides that a Modern award may include an industry-specific redundancy scheme if the scheme was included in the award: (a) in the award modernisation process; or (b) in accordance with sub-section (2).
9. The **Note** following sub-section 141 (1) states that *“An employee to whom an industry-specific redundancy scheme in a modern award applies, is not entitled to the redundancy entitlements in Subdivision B of Division 11 of Part 2-2”*.
10. However, the broader Redundancy scheme arrangements are provided in Division 11 of the Fair Work Act.
11. Section 119 of the Act states at s. 119 (1) that *“An employee is entitled to be paid redundancy pay by the employer if the employee’s employment is terminated:*
- (a) at the employer’s initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or*
- (b) because of the insolvency or bankruptcy of the employer”*.
12. Sub-section 123 (3) states that subdivision A – Notice of Termination or Payment in Lieu – does not apply to:

⁷ Print J2371; 24th April 1990

⁸ Print J3518; [1990] AIRC 685 (16th July 1990)

- (b) *a daily hire employee working in the building and construction industry (including working in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures); or*
- (c) *daily hire employees in the meat industry; or*
- (d) *weekly hire employees in the meat industry.*

13. When looked at collectively and giving consideration to the form of employment of sprinkler fitters, then the action of resignation should not apply to sprinkler fitters.

PLUMBING and FIRE SPRINKLERS AWARD 2010

- 14. The *Plumbing and Fire Sprinkler Award 2010* specifically identifies sprinkler fitter employees as weekly hire employees.
- 15. Clause 18 of the Award sets out the Redundancy provisions as applicable under the Award.
- 16. The *Plumbing and Fire Sprinklers Award* clearly identifies the type of employees covered by the Award: essentially there are 3 categories: daily hire employees (plumbing and mechanical services employees only); weekly hire employees; and casual employees.
- 17. The MPA (NSW) refers to the distinction between clause 17.2 and 18.5. Sub-clause 18.5, “Employee leaving during notice period”, commences with the words “*An Employee whose employment is to be terminated ...*”. This suggests termination by the Employer and not by the employee (viz., resignation).
- 18. It is noted that the predecessor award for sprinkler fitters, the *Sprinkler Pipe Fitters’ Award 1998* (AP796603CRV) did not refer to nor provide for any reference to “daily work”.
- 19. FPA submits that the extended definition of “redundancy” does have a significant impact upon small businesses in that payments for resignation are required to be made.

CONCLUSION

- 20. FPA recognises that industries have distinctive features as well as important historical and functional aspects that cannot be ignored.
- 21. However, where circumstances differ even within such specific industries, the differences need to be recognised.

22. Fire Protection Association Australia also supports the submissions of the Master Plumbers and Mechanical Contractors Association of NSW, with respect to the Modern Award review process and decisions and respectfully submits that the Commission vary the *Plumbing and Fire Sprinklers Award 2010* by excluding “resignation” from the definition of “redundancy”.
23. Fire Protection Association Australia respectfully proposes the following draft provision:
*“18.2 **Definition:** For the purposes of this clause, **redundancy** means a situation where an employee (not including resignation by employees employed on weekly hire) ceases to be employed by an employer other than for reasons, of misconduct or refusal of duty. **Redundant** has a corresponding meaning”.*
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