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Fair Work Commission
Level 16, 111 St George's Terrace
Perth 6000

Recognition of 'itinerant' workers in Modern Awards and EBAs

Dear Sirs

I wish to draw your attention to a glaring anomaly in Modern Awards which allows employers to make their own rules in reimbursing travel allowances to employees who use their own vehicles in performing their duties as required by their employers.

In my case, along with many other support workers, I;

- a) leave home each day to drive in my own vehicle to my first client whom I take out into the community to undertake activities
- b) after the service I travel to another client's home and do exactly the same
- c) after the second service is complete I then return home.

In terms of reimbursement for using my vehicle;

- a) my employer does **NOT** pay for the first 20k of travel to my first client nor
- b) does it pay for the first 20k of my return journey home at the end of the day.

However;

- a) my employer does reimburse me for the kilometres travelled between clients and
- b) my employer reimburses all kilometres for outings with my clients.

In my opinion the above terms and conditions make me an 'itinerant' worker, as defined by the following extracts from Taxation Ruling IT 112 on the ATO website at <http://law.ato.gov.au/atolaw/view.htm?locid=%27ITR/IT112/NAT/ATO%27&PiT=99991231235958>.

Quote

18. In Wiener a deduction was allowed for certain motor vehicle expenses in travelling in connection with the pursuit by the taxpayer of her vocation as a school teacher employed by the Education Department of Western Australia. The taxpayer was engaged in a pilot scheme teaching foreign languages to primary students and she was

allocated as part of her normal teaching duties the task of instructing pupils at five different schools. It was not practical to commute between these schools by public transport. The paper work involved in developing the teaching programme necessitated a study to be maintained at her home set apart exclusively for her teaching work. Deductions were allowed for various expenses in relation to this study. It was not disputed that expenses incurred in travelling between schools were deductible and the issue in the appeal was the deductibility of the cost of travelling between her home to the first school of each day and between the last school on each day and her home.

19. Smith J. in the Supreme Court of Western Australia held that it was not open to challenge that travel was a fundamental part of the taxpayer's work; **the taxpayer would not have been able to perform her duties without the use of her motor vehicle.** On four of the five working days the taxpayer's contract of employment required her to teach at not less than four different schools and to comply with an exacting timetable which kept her on the move throughout each of those days. The nature of the job itself made travel in the performance of its duties essential and **it was a necessary element of the employment that on those working days transport be available at whichever school the taxpayer commenced her teaching duties and that transport remained at her disposal throughout each of those days. It appeared to have been tacitly understood that she would provide her own means of transport as she was paid an allowance by her employer for the use of her motor vehicle in travelling between schools.** Smith J. took the view that the travelling expenses claimed by the taxpayer fell within the category of travelling expenses referred to in Taylor v. Provan (1975) AC 194 (per Lord Simon of Glaisdale at p.221) **where the office or employment is of itself inherently an itinerant one, and that the taxpayer may be said to be travelling in the performance of her duties from the moment of leaving home to the moment of return there.**

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cases comparable with Wiener: Expenditure on travelling may be accepted as having the essential character of expenditure incurred in gaining or producing the assessable income of a taxpayer in the relevant sense where the office or employment of the taxpayer is precisely the same as that in Wiener, namely, it is inherently of an itinerant nature; travel must be a fundamental part of the taxpayer's work; **the taxpayer must not be able to perform his duties without the use of a motor vehicle; the taxpayer's contract of employment must require him to perform his duties at more than one place of employment; the nature of the job itself must make travel in the performance of its duties essential; and, it must be able to be said of the taxpayer that he is travelling in the performance of his duties from the time of leaving home.**

Unquote

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The whole crux of my argument is based upon when my duties actually commence. Is it:

- a) from the moment I leave home or
- b) from the moment I arrive at the home of my first client?

I have emboldened and underlined the relevant statements in the case law above which appear to back up my contention that my duties commence from the moment I leave home.

Casual employees are effectively **providing a fleet of vehicles to AWA**. Alternatives to this could only be one of the following b:

- a) AWA providing a vehicle to each employee which could be picked up from a central depot at the start of each day and returned to the depot at the end of the day
- b) AWA providing a vehicle to each employee which could be used for business purposes only (due to tax reasons) but allowed to be parked overnight at the employee's home
- c) AWA delivering a vehicle to the residence of the first client where it could be picked up by the support worker for use and, later, AWA could pick up the vehicle from the residence of the second client for delivery back to a depot. This option is not very feasible as the support worker still has to get to and from the clients' houses and an employee of AWA would have to go to and from the office to deliver and collect the vehicle being used.

Based on the above, it would appear that my employer should reimburse me for all kilometres travelled from the time I leave home at the start of the day to my return home at the end of the day. In other words, I and my colleagues, fellow support workers, are 'itinerant' workers.

My work is covered by the Social, Community, Home Care and Disability Services Industry Award 2010 (MA000100) and by an EBA approved by the Fair Work Commission (Alzheimer's Australia WA Ltd – AG2016/3404) which allows my employer to decide its own rules in reimbursing travel costs without recognition of the fact that support workers are 'itinerant'. Not only this, my employer makes its own decision about when my duties actually commence, because the Award is silent on the matter.

It would appear to me that the clause in the Award covering reimbursement of travel costs should be more clearly defined to recognise which workers in organisations are 'itinerant' so that employees are reimbursed properly for using their own vehicles. As things stand at the moment, under the EBA covering my organisation (and presumably this extends to other organisations throughout Australia), support workers are effectively subsidising our employer to the tune of up to 200k (40k per day x 5) of travel

per week per support worker. This is clearly very unfair as, **unless a vehicle actually arrives at the residence of our clients, the service (taking people on outings) would not actually take place.**

Effectively we are being penalised twice because we are not paid for travelling time at the start and end of each day, nor are we paid for travel time in between clients.

I trust you will look at this matter in depth and take steps to rectify this unfortunate state of affairs.

Thank you for your consideration.

Yours faithfully

Martin Darke