

FAIR WORK ACT 2009

Section 156 – FOUR YEARLY REVIEW OF MODERN AWARDS

AM2016/5 – Substantive Issues in:

Ports, Harbours and Enclosed Water Vessels Award 2010

Seagoing Industry Award 2010

Marine Towage Award 2010

SUPPLEMENTARY SUBMISSIONS FOR THE MARITIME UNION OF AUSTRALIA IN RESPONSE TO THE SUBMISSIONS OF SEA SWIFT PTY LTD

Background

1. On 12 December 2016 Sea Swift Pty Ltd (**Sea Swift**) served their supplementary submissions (**ASS**). These submissions respond to those submissions.

Outline of Submissions

2. At paragraph 17 of the ASS Sea Swift asserts that in 1991 the *Self Propelled Barges and Small Ships Industry Award 2001 (SPB Award)* “assumed the standing of a properly fixed minimum rates award.” This is incorrect. It was not until the decision of Commissioner Eames (PR908398) in 2001 that the SPB Award was converted from a paid rates award into a minimum rates award. At this time the SPB Award only applied to a single enterprise, Perkins Shipping Group.
3. At paragraph 19 of the ASS Sea Swift has formatted the word “Industry” in the name of the SPB Award in bold font. The mere fact that the word “industry” is contained in the name of an award does not determine that it is an industry award. Instead regard must be given to the actual terms of the award. In the case of the SPB Award it applies to a single enterprise. It follows that the SPB Award is not an industry award.

4. At paragraph 20 of the ASS Sea Swift asserts that the recession of the SPB Award without making provision for specific coverage was both erroneous and anomalous. This submission is flawed. Firstly the AIRC was aware of the SPB Award at the time of modernisation of awards.
5. Secondly the Seagoing Industry Award 2010 made by the FWC provided for coverage of

“vessels trading as cargo vessels, passenger vessels or operated as Research vessels which, in the course of such trade or operation, proceed to sea (on voyages outside the limits of bays, harbours or rivers)”

whereas the coverage of the SPB Award prior to its termination was:

“operation of self-propelled barges and small ships, which in the course of such trade proceed to sea (on voyages outside the limits of bays, harbours or rivers).

6. Thirdly the extract from the decision of the Full Bench in *4 yearly review of modern awards – Vehicle Manufacturing, Repair Services and Retail Award 2010* [2016] FWCFB 4418 is incomplete. Significantly paragraph 73 in its entirety reads:

[73] With respect to the SDA, this is not demonstrative of any error. It only demonstrates that a methodology was used which the SDA, with the benefit of hindsight, would prefer not to have been used. Nothing was placed before us to suggest that the AIRC did not intend to [2016] FWCFB 4418 33 use that methodology, or that some mathematical error was made in calculating the rates in accordance with that methodology. We do not accept that disagreement - even a well-founded disagreement - with a previous decision concerning an award is sufficient to establish an error for the purpose of s.160. What is necessary is to show that some sort of mistake occurred, in that a provision of the award was made in a form which did not reflect the tribunal's intention. There is nothing to suggest that this occurred here. Accordingly the SDA's application under s.160 must be dismissed.

7. By analogy with that decision Sea Swift has not placed before the FWC anything that suggests that the AIRC did not intend the SPB Award to be terminated and for employers to be covered by the Seagoing Industry Award 2010. There is simply no evidence of a mistake by the AIRC.

Conclusion

8. The claims by Sea Swift and AIMPE should be dismissed.

Dated: 22 December 2016



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