



Australian Road Transport
Industrial Organisation

ABN: 63 734 697 902

AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

Respect, Respond and Represent

In the Fair Work Commission

Matter No: AM2021/72

S. 158 - Application by Menulog Pty Ltd to make a Modern Award for the On Demand Delivery Services Industry

Submission by the Australian Road Transport Industrial Organization (ARTIO)

These submissions are made in response to the Menulog Pty Ltd (Menulog) application to make a modern award for the ‘On Demand Delivery Services Industry’ and pursuant to the Statement issued by the Fair Work Commission (FWC) Full Bench on 12 July, 2021.

The ARTIO opposes the application made by Menulog for the making of a modern award to cover the ‘On Demand Delivery Services Industry’. ARTIO submits that there is already an applicable modern award in place which meets the modern awards objective, provides a fair and minimum safety net of standards and conditions of employment to those employees working in the so-called ‘on demand delivery industry’ – that modern award is the Road Transport & Distribution Award 2020.

Background

1. The Australian Road Transport Industrial Organisation (ARTIO) is the only Industrial Organisation of Employers registered under the Fair Work Act 2009 which specifically represents employers in the road transport and distribution industry. As at July 2021, it had around 400 members. These include the large multi-national transport companies down to the small family owned businesses that perform a large percentage of Australia’s freight task.

2. ARTIO operates as a federation with Branches in all States, except South Australia. ARTIO and its Branches operate independently and in accordance with a common set of rules applying across the Organisation.
3. ARTIO Council, which has a representative from each State, meets on a bi-monthly basis to consider and discuss IR issues impacting the organisation and its members. Much of its day-to-day activities are carried out by the Branches, especially when dealing with operational IR issues. This submission is made on behalf of the Organisation and its Branches.
4. ARTIO has been closely involved, since its registration in 1984, with the Transport Awards, specifically the Road Transport and Distribution Award 2020 (RTD Award) and its various predecessor awards of both the Australian Industrial Relations Commission and the Conciliation and Arbitration Commission.

Submissions

A. Award Coverage/definitions

5. The ARTIO notes that the Menulog application defines the ‘On Demand Delivery Services Industry’ to mean:
 - ‘the collection and delivery of food, beverages, goods or any other item, that are ordered by a consumer from third-party businesses that offer food, goods and other items for sale for immediate collection and delivery on an online or application-based platform, provided that:
 - (a) the collection and delivery is not of the employer’s own food, beverages, goods or other items offered by it for sale; and
 - (b) the employer is not in the primary business of providing general transport or delivery services at large of food, beverages, goods or any other item that has not been purchased on its online platform.’ (underlining added).
6. At Clause 4.2, the RTD Award defines its coverage, and specifically the ‘road transport and distribution industry’ to mean, amongst other things:
 - “4.2 The road transport and distribution industry means:
 - (a) the transport by road of goods, wares, merchandise, material or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise,

and/or livestock, including where the work performed is ancillary to the principal business, undertaking or industry of the employer; (underlining added)

7. The ARTIO submits that these definitions are so close to each other as to be interchangeable. Clearly, the collection and delivery of any ‘food, beverages, goods or other item’ is the same as ‘the transport by road of goods, wares, merchandise, material or anything whatsoever’. In fact, the word ‘goods’ appears in both definitions and ‘other items’ is not distinguishable from ‘anything whatsoever’.
8. Further, it appears as though the conditions imposed in paragraphs (a) and (b) of the Menulog definition have been based on the words used in the RTD Award around *‘work being ancillary to the principal business, undertaking or industry of the employer’*.

B. Classifications

9. The ARTIO would expect that the work performed by Menulog employees in the collection and delivery of food, beverages, goods or any other item will be done by one of the following methods:
 - on foot by walkers;
 - on bikes, whether pedal powered, electric or motorised;
 - in motor vehicles.
10. The RTD Award has a classification structure that provides minimum rates of pay to those employees engaged in the transport by road of goods, wares, merchandise, material or anything whatsoever, which includes food, beverages, goods and any other item. These are detailed in Schedule B – Classification Structure of the Award, and are set out in the table below, along with the minimum rates of pay:

Transport Worker Grade 1	Minimum Rates: Weekly \$818.30; Hourly \$21.53
	General Hand; greaser & cleaner, yardperson, vehicle washer and detailer, motor driver’s assistant/furniture remover’s assistant

	Loader – other than a freight forwarder
	<i>Courier – foot or bicycle</i>
Transport Worker Grade 2	Minimum Rates: Weekly \$838.90; Hourly \$22.08
	Loader – freight forwarder
	Tow motor driver
	<i>Driver of a rigid vehicle (including a motorcycle) not exceeding 4.5 tonnes GVM</i>

(emphasis added in bold italics)

11. The ARTIO submits that the classification structure detailed above covers all of the methods of delivery used by Menulog, but notes there are another 8 grades contained in the classification structure if there were to be larger vehicles required.
12. The RTD Award covers the collection and delivery of parcels, however described, from point A to point B. Menulog would have the Commission differentiate between the collection and delivery of a ‘food parcel’ from any other type of parcel – noting that Menulog have used a broad definition to include ‘any other item’.
13. The transport of ‘goods’ includes all goods and ARTIO notes that currently it has members engaged in the collection and delivery of food, both in a prepared, as well as a natural state, on behalf of retail clients.
14. If the Commission was to accept Menulog’s submissions and make a new award to cover the ‘on demand industry’ then it would create mass confusion around award coverage, especially as messenger/courier companies work on an ‘on demand’ basis – a client rings up, or uses an app or the internet, to arrange for the collection of a parcel and then its subsequent delivery, which could be local, intrastate or interstate.
15. This confusion would create problems for transport industry employers and the FWC when selecting an award against which an enterprise agreement is benchmarked for the ‘better off overall test’.

16. The RTD Award, including its predecessors back to the *Transport Workers (General) Award 1959* have regulated the terms and conditions of transport workers engaged ‘in or in connection with the transport of goods, wares, merchandise, material or anything whatsoever’ (*Clause 4 of the Transport Workers Award 1983*).

C. Conditions of Employment

17. The ARTIO notes in the FB Statement the Commission requires further submissions and evidence to inform its consideration of this application, particularly around working times and that the existing ‘spread of hours’ might not be fit for purpose.

18. Currently, the ‘spread of hours’ in the RTD Award applies generally across the road transport industry, but notes that, clause 13.6 (b) allows the spread of hours to be extended by an hour at each end of the day by agreement, either with the majority of employees or an individual employee.

19. The ARTIO also points to sub-clause (c) of clause 13.6 of the RTD Award which provides for exceptions to certain industry sectors from the general application of the spread of hours clause.

20. Further, the RTD Award currently contains a different ‘spread of hours’ clause and working of ordinary hours clause for those transport workers engaged as ‘Oil Distribution Workers’ as defined.

21. If, and it is a very big if, Menulog can substantiate through further submissions and detailed evidence that the current spread of hours impacts on its ability to provide efficient transport services, then it could seek such an exception, either through sub-clause 13.6 (c) or via a specific clause similar to that applying to the oil distribution section of the transport industry contained in Clause 14 of the RTD Award.

D. Conclusion

22. The ARTIO makes these initial submissions in response to Menulog’s application and the FB Statement.

23. The ARTIO submits that the applicant bears the onus of proving that there is not a pre-existing suitable modern award which could cover its employees and hence a new award is required.
24. Given that the coverage of the RTD Award specifically means 'the transport by road of goods, wares, merchandise, material or anything whatsoever' and there is a classification structure in place that covers all the methods of delivery that Menulog could conceivably use, with fair safety net standards and minimum rates in place, then it is difficult to see how the applicant can discharge that onus.
25. The ARTIO opposes this application and will be seeking leave to be represented at the Mention scheduled for Hearing on 23 August 2021 and looks forward to participating fully in this matter.

ARTIO

9 August 2021