

IN THE FAIR WORK COMMISSION

Matter No: AM2019/23 and AM2020/2

Section 158 – Application to vary or revoke a modern award –
ROAD TRANSPORT (LONG DISTANCE OPERATIONS) AWARD 2010

SUBMISSION OF TREVOR WARNER (APPLICANT)

THE APPLICANT SEEKS THE FOLLOWING AMENDMENTS TO THE FOLLOWING:

1. The Applicant seeks to vary Clause 3, Definition of “Loading and Unloading.”

OMIT;

tarping, installing and removing gates and operation of on-board cranes

INSERT;

All non-driving activities including but not limited to;

[i] Complying with entrance and departure procedures at load or unload location.

[ii] apply or release all load restraint devices, including gates and tarps.

[iii] Operation of trailer curtains.

[iv] Operation of forklifts, pallet jacks, winches and mobile cranes.

[v] Be on-call or to Assist a third party to load or unload freight.

[vi] Waiting time or Queuing time.

[vii] Processing of freight documentation.

[viii] checking vehicle weights on weighbridge.

2. The Applicant seeks to vary clause 14.2 C (i) – “Travelling Allowance”

OMIT;

“This will not be payable where an employee is provided with Suitable Accommodation away from the vehicle.”

THE APPLICANT REQUESTS A FULL BENCH HEARING ON THESE MATTERS

[1] DEFINITIONS

“Local Award” means	<i>Road Transport and Distribution Award 2010</i>
“LD Award means	<i>Road Transport (Long Distance Operations) Award 2010</i>
“PUDS” means	Pickup and Delivery Service
“Fatigue Laws” means	<i>Heavy Vehicle National Law (Queensland) 2018</i>
“Driver” means	A person who drives a heavy vehicle
“Long Distance Operation”	as per clause 3 in the LD Award
“Linehaul driver” means	A road transport driver who does not engage in Loading or Unloading

[2] CASES CITED

Bewley v Linfox Interstate Transport [1998] SAIRC 37 (21 July 1998)
Graham Jones v Post Transport Pty Ltd [1999] NSWCMC 3 (1 January 1999)
Burge v Adelaide Interstate Loading Agency Pty Ltd [2014] SAIRC 31 (26 September 2014)
Laycock v J & C Independent Carriers Pty Ltd [2018] FCCA 6 (12 February 2018)
Transport Workers’ Union of Australia v Linfox Australia Pty Ltd [2020] FWC 489 (31 January 2020)¹

[3] INTRODUCTION

The Applicant has been employed as a Long-Distance Truck Driver for some 15 years and has travelled in excess of 3 million kilometres. During this time, the Applicant mostly transported fresh food and cold supply chain between Qld, NSW, Victoria, South Australia and Western Australia. In most cases, the Applicant was physically engaged, in some form, in the Industry accepted process of Loading and Unloading.

The intent of this Submission is to address a loophole that has developed within the LD Award, which has enabled transport companies to exploit Long Distance truck drivers. The definition of “Loading and Unloading” is being used by some transport providers to allow a financial advantage in the marketplace and create an uneven playing field. The differing transport sectors utilising Long Distance truck drivers, does not provide equal remuneration for the same duties performed.

Linehaul Drivers receive the same remuneration as other drivers of the same classification, however, non Linehaul Drivers can be expected to perform extra duties without the appropriate remuneration for those duties.

It is accepted throughout the Industry that a driver shortage is occurring. In my experience of driving and employing drivers in a Human Resource role, as well as fleet operations, drivers were often deterred by the lack of remuneration for ALL duties performed. The Road Transport Industry must

¹ <https://www.fwc.gov.au/documents/decisionssigned/html/2020fwc489.htm>

address this issue and I believe amending the definition of *Loading and Unloading* will assist bridging this issue of exploitation by unpaid work.

[4] The effect of this does not support the principles of Sect 134 of the Fair Work Act 2009, in particular, Sect 134 (1)(e)².

FAIR WORK ACT 2009 - SECT 134

The modern awards objective

What is the [modern awards objective](#)?

(1) The FWC must ensure that [modern awards](#), together with the [National Employment Standards](#), provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) relative living standards and the needs of the low paid; and
- (b) the need to encourage collective bargaining; and
- (c) the need to promote social inclusion through increased workforce participation; and
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
- (da) the need to provide additional remuneration for:
 - (i) [employees](#) working overtime; or
 - (ii) [employees](#) working unsocial, irregular or unpredictable hours; or
 - (iii) [employees](#) working on weekends or [public holidays](#); or
 - (iv) [employees](#) working shifts; and
- (e) **the principle of [equal remuneration for work of equal or comparable value](#)**; and
- (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

[5] HOW ARE LONG DISTANCE DRIVERS BEING EXPLOITED?

The cases cited show a clear ongoing concern for Drivers who are performing their scheduled duties and remuneration is not occurring, due to this ambiguous definition of Loading and Unloading. At this point we need to reconstruct what the modern day truck driver is engaged to perform.

The Commissioner in *Laycock v J&C Independent Carriers*, paragraph 19, made mention that no amendments have been made to the definition of Loading and Unloading.

The Award is a Modern Award which applied to J & C from 1 January 2010. There have been variations to the Award since 1 January 2010.^[10] It is apparent from the definition of loading or unloading that there has been no variation to that definition since 1 January 2010. Since at least 1993 the awards upon which the Award was based have used a similar definition of loading and unloading as provided for in the Award.^[11] The only significant addition since the operation of the *Transport Workers' (Long Distance Drivers) Award 1993* appears to be the reference to “the operation of on board cranes”.

² http://classic.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s134.html

With modern day transport operations, and with the introduction of OH&S laws, most transport companies now have their own loading and unloading service or PUDS. This allows Linehaul truck drivers to be off-duty prior to the commencement of a Long-Distance operation. The Linehaul driver only has to deal with the truck itself. There is no engagement whatsoever in performing duties involving the freight on the trailers.

In the ***Laycock v J&C Independent Carriers*** matter, evidence was provided to demonstrate the company indeed had their own forklift service and NO ENGAGEMENT from the driver was necessary. The Linehaul driver had the opportunity to relieve themselves of duties upon arriving at the destination. This would comply with clause 20.4 of the LD Award.

[6] The APPLICANT has been employed by various companies who from time to time, provided a Road Transport service to TOLL IPEC, STARTRACK EXPRESS and DIRECT EXPRESS FREIGHT. These companies have their own Pickup and Delivery service, PUDS, and indeed NO ENGAGEMENT from the driver was necessary before commencing a Long-Distance Operation.

[7] The Definition of a Long-Distance operation, as outlined in cl.3 of the LD Award.

“long distance operation means any interstate operation, or any return journey where the distance travelled exceeds 500 kilometres and the operation involves a vehicle moving livestock or materials whether in a raw or manufactured state from a principal point of commencement to a principal point of destination. An area within a radius of 32 kilometres from the GPO of a capital city will be deemed to be the capital city.”

[8] For the period from approx. 2005 to 2020, the Applicant has been engaged in Long Distance Operations and the definition stated in [7] has frequently morphed from “Principle point A to Principle point B”, into “Points A,B,C, and D”. Essentially combining a Long-Distance operation with other duties covered by the Local Award, *Road Transport and Distribution Award 2010*. Not only was I scheduled to perform all duties ancillary to *Loading and Unloading*, but also travelled many kilometres within the 32kms of a Capital City without remuneration for those kms travelled. My employer used the definition of *Long-Distance Operation* to escape providing payment for kms travelled at a Capital City.

[9] Despite clause 4.2 of the *Road Transport (Long Distance Operations) Award 2010*,

“4.2 The award does not cover an employee while they are temporarily required by their employer to perform driving duties which are not on a long-distance operation, provided the employee is covered by the Road Transport and Distribution Award 2010 while performing such duties.”

the LD driver still only receives remuneration as cents per kilometre or Hourly Driving rate stated in cl.13.4. of the payable for the appropriate vehicle classification of the *Road Transport (Long Distance Operations) Award 2010*

(a) An employee engaged in a long distance operation may be paid for the driving component of a particular journey by multiplying the number of kilometres travelled by the cents per kilometre rate for the relevant vehicle, subject to clause 13.4(b).

OR

(b) The minimum hourly driving rate is calculated by dividing the minimum weekly rate prescribed by clause 13.1 by 40, and multiplying by 1.3 (industry disability allowance) and 1.2 (overtime allowance).

There is no mechanism to identify the point where the Local Award takes effect, and the LD Award does not provide an option for an employee to be remunerated by way of “Hourly with Overtime” as reflected in the Local Award.

[10] In a Recent Western Australian matter of *TWU v Linfox Australia Pty Ltd* [2020] FWC489, the Commissioner stated:

“[88] The Full Bench’s consideration of the definition of ‘long distance operation’ proves helpful here. In the Four Yearly Review of the Long Distance Award, the TWU sought the inclusion in the Award of a new ‘Pick-up and Drop-off allowance’. One of the triggers for payment of the proposed allowance was the circumstance where an employee engaged in a long-distance operation was required to pick up or drop off freight at two or more locations at the principal point of commencement or principal point of destination. The Full Bench rejected the TWU’s claim for the allowance, while its reasoning for rejecting the claim was quite lengthy, it stated in part:

There is nothing in the definition of ‘long distance operation’ to imply that an operation will only involve one pickup and one drop-off. For a journey to constitute a long distance operation, it must (at least) involve moving livestock or materials from a principal point of commencement to a principal point of destination. That does not mean the journey might not involve picking up or dropping off at more than one location. Indeed, that possibility is implicit in the use of the word ‘principal’, which implies that there might be ‘secondary’ points of commencement or destination.”

[11] INEQUALITY IN THE AWARD

The inequality between Drivers of different transport sectors, but covered by the same *Road Transport (Long Distance Operations) Award 2010* reveals itself at this point.

Drivers who are engaged to perform their duties as a Linehaul driver for an Express freight company stated in paragraph [6] receive the same remuneration as stated in paragraph [8].

[12] This brings us to Clause 20.4 of the *Road Transport (Long Distance Operations) Award 2010*

“20.4 Time must be computed from the time the employee is rostered or registers for duty, whichever is the later, and until the employee has been effectively released from duty.”

Drivers engaged as a Linehaul driver by the large Overnight Express companies, as stated in paragraph [6], roster their drivers to perform a Long-Distance Operation and once that Operation is completed, the Driver is relieved of duty. The remuneration to those Linehaul drivers is the same as the other drivers, who cannot end their shift and are scheduled to deliver freight directly to customers.

Often this task is scheduled immediately after arriving at the Capital City and with limited time remaining of legal work hours under the HVNL 2018 laws.

[13] The Applicant agrees the appropriate CENTS PER KM rate as stated in cl.13.4 is consistent and equal to a driver paid by way of “Hourly with Overtime”, as per the Local Award.

The Applicant has been rostered to commence a long-distance operation from Brisbane to Sydney, which has an agreed distance of 950km, as per cl. 13.4 of the LD Award. The roster requires the driver to present for night shift work at 6pm and scheduled to perform driving duties only which would include:

- Pre trip inspection
- Refuel
- Drive 3hrs
- Paid 15 minute rest break
- Drive 3 hrs
- Unpaid 30 minute meal break
- Drive 3hrs
- Paid 15 minute rest break
- Drive 2 hrs and arrive at Destination
- 1 x Overtime meal allowance at Relief of duty at 6am ³

³ Taken from FWO Pay guide for MA000038

Hourly rates with overtime and shift allowances

Night shift \$31.97 - Overtime first 2hrs \$33.98 - Remaining Overtime \$45.30

		<u>31.97</u>	<u>33.98</u>	<u>45.3</u>
Pre-Trip check	0.25		7.6	242.972
Refuel	0.25		2	67.96
3hrs Drive	3		2.4	108.72
15min paid rest break	0.25			
3hrs Drive	3			
30mins Unpaid rest break	0			
3hrs Drive	3			
15min paid Rest Break	0.25			
Last leg of journey	2			
Overtime Meal Allowance				17
	12			\$436.652
	0.461	950 kms		\$437.95

CENTS PER KM METHOD Bris-Syd journey - 950 kms x 46.1 cents per km = \$437.95

The Driver performs NO DUTIES in relation to the freight on board the Heavy Vehicle.

[14] The Applicant engaged to present at a transport company based south of Brisbane and transport fresh produce to Woolworths Supermarket DC in SYDNEY. Roster shall commence from 4pm.

The schedule would reflect ⁴:

- 15 mins Pre trip inspection
- 15 mins Refuel
- 30 mins drive to loading point
- 1 hr loading time where the driver MUST assist forklift operator to secure freight.
- Drive 3hrs
- Paid 15 minute rest break
- Drive 3 hrs
- Unpaid 30minute meal break
- Drive 3hrs
- Paid 15 minute rest break
- Drive 2 hrs and arrive at Destination
- 1 x Overtime meal allowance at 6am

⁴ Taken from FWO Pay guide for MA000038

Night shift \$31.97 - Overtime first 2hrs \$33.98 - Remaining Overtime \$45.30

		<u>31.97</u>	<u>33.98</u>	<u>45.3</u>
Pre-Trip check	0.25		7.6	242.972
Refuel	0.25		2	67.96
3hrs Drive	3		4.4	199.32
15min paid rest break	0.25			
3hrs Drive	3			
30mins Unpaid rest break	0			
3hrs Drive	3			
15min paid Rest Break	0.25			
last leg of journey	4			
Overtime Meal Allowance				17
	14			\$527.252
<hr/>				
0.461	950 kms			\$437.95

Present at Woolworths Supermarket Distribution Centre to deliver freight which takes a total of 2 hrs. During this time, the driver MUST be assisting the forklift operator 100% of the time. The Driver cannot be relieved of duty.

Driver is relieved of duty at 8AM and has complied with the Fatigue laws with no room for delays and has been pushed to the extremities of their **legal work hours** provided under the Fatigue Laws.

The Driver is physically engaged in all duties including:

- [i] Complying with entrance and departure procedures at load or unload location.**
- [ii] Apply or release all load restraint devices, including gates and tarps.**
- [iii] Operation of trailer curtains.**
- [iv] Be on-call or to Assist a third party to load or unload freight.**
- [v] Waiting time or Queuing time.**
- [vi] Processing of freight documentation.**
- [vii] Checking vehicle weights on weighbridge.**

The driver could not operate the device used TO PLACE or TO REMOVE the freight, because the truck driver is not approved to operate these devices in this workplace.

The driver can not be relieved of duty until Woolworths staff have completed the unloading of the freight and the driver released by security staff from the premises.

To deny remuneration for this extra 2 hours of duties performed is in conflict with clause 20.4 of the LD Award.

The Driver is not a Linehaul driver and MUST be physically engaged in the performance of their duties.

[15] The example in paragraph [13] demonstrated the driver performs 12hrs of duties, whereas in Paragraph [14], the driver has performed 14hrs of duties. The current interpretation of the LD Award means BOTH DRIVERS RECEIVE EQUAL REMUNERATION, yet clearly the duties were vastly different.

[16] If the Transport Company does not have the correct accreditation provided for under the HVNL 2018 to allow the same driver to perform 14 hrs of duties, the Transport company MUST lawfully engage another driver to complete delivery to Woolworths. Typically, this driver would be a local driver engaged under the *Road Transport and Distribution Award 2010* and paid according to that Award.

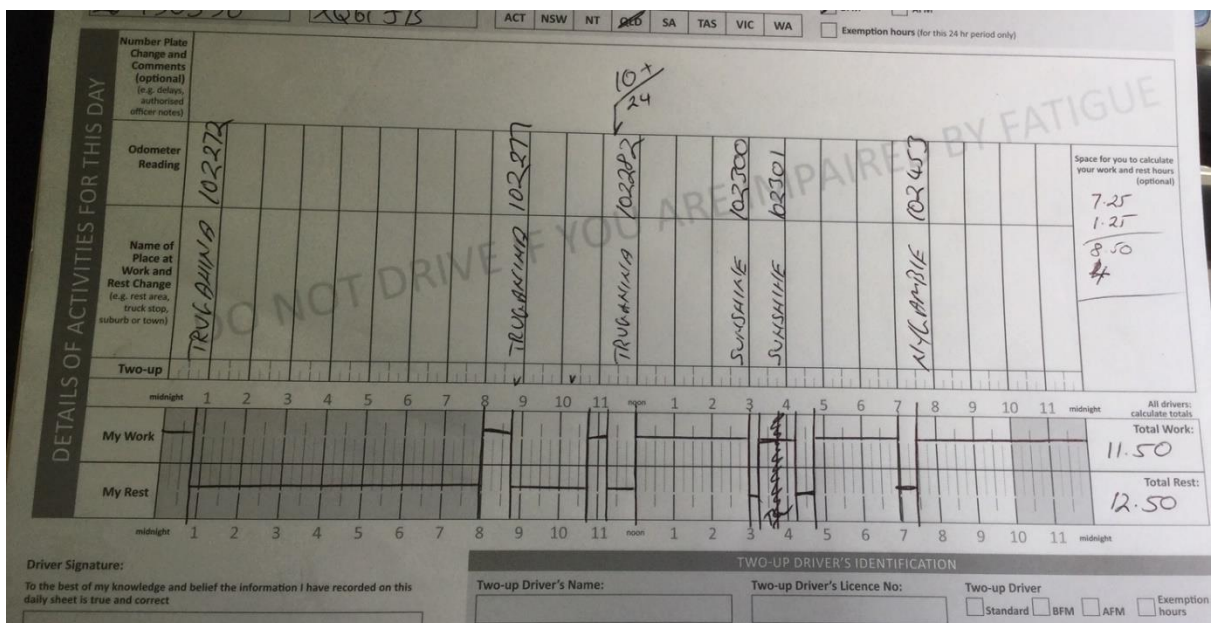
[17] If the transport company does hold the proper accreditation provided for under the HVNL Act 2018, it is typical that the same driver is engaged to complete all the tasks stated in paragraph [14] and only receive the same remuneration as the driver in clause [13]. The transport company IS NOT required to employ a local driver.

[18] In the above scenarios, the driver cannot be relieved of duty. Whilst they might not be operating a lifting device, they are still physically engaged in all of the other processes to complete the scheduled duties... Paragraph [13] clearly shows the 'CENTS PER KM" rate covers only the driving duties and in no way, is sufficient to compensate the driver for any tasks related to the actual freight on board the vehicle.

[19] Only once all these duties are completed can the driver be relieved of duty as per clause 20.4 of the *Road Transport (Long Distance Operations) Award 2010*.

[20] The image below [Figure 1] is a National Work Diary page of the Applicant. The record clearly shows the driver shift commenced at 8:00am with ancillary *Loading and Unloading* duties, with the Long-Distance Operation commencing at 4:45pm.

Figure 1



This record shows the driver commenced their scheduled duties at 8:00am with a delivery to Coles Distribution Centre in Laverton, Vic. There was a significant delay, in which the driver was off-duty and had a meal break and a short rest.

The driver discovered a flat tyre and drove to the tyre shop from 10:45am to 11:15am and had a 30 min rest. The LD Driver was not paid separately for this breakdown.

The instructions issued to the driver was to go and collect freight from pick up point 1, where there were more delays. Instructions were amended to include a second pick up at the adjunct suburb and collect the balance of the freight, relevant documentation and check vehicle weights. This occurred between 12:00pm and 4:15pm.

The driver then utilised a 30minute rest break for preparation for the Long-Distance Operation.

Some companies would have engaged drivers under the *Road Transport and Distribution Award 2010* to complete these duties, but the Long-Distance driver was engaged instead and only received remuneration for actual kms travelled at the appropriate rate outlined per cl.13.4 from 8:00am to 4:15pm

This meant the driver only received wages from 4:45pm to past 12:00am, until the driver had worked the maximum legal amount of hours, as dictated by the fatigue laws. The time between 8am and 4:45pm is remunerated at CENTS PER KM only OR

Odometer was recorded as 102277 to 102301 which is 24kms at the Grade 6 pay rate of 46.1 CENTS PER KM OR \$11.06

This example shows the Driver was awake for 17hrs during the course of the scheduled duties, but only received proper remuneration for 50% of that time.

[21] In Figure 1, the period between 8:00am and 4:15pm is what the Applicant has always recognised and what most Transport companies refer to as "*Loading and Unloading*". Reiterating the definition in the LD Award should reflect more than the literal meaning stated by the commissioner in *Bewley v Linfox* matter

In ***Bewley v Linfox Interstate Transport [1998] SAIRC 37 (21 July 1998)***, His Honour made this statement:

"There is no definition of loading and unloading in the Award and accordingly it falls to me to determine whether in the words of the Award the applicant was `engaged in the duties of loading and unloading'.

The Australian Concise Oxford Dictionary defines the verb `load' as `put or place a load on board'.

The liner train drivers did not load and unload.

The same dictionary defines `engaged' as `occupied' or `busy' and there is some ambiguity as to whether or not the drivers were nevertheless `engaged' in that activity.

I have no evidence before me as the intention of those who framed the Award."

[22] [Figure 2] is another National Work Diary page of the Applicant. Here the Driver is engaged in ancillary duties to the current definition of *Loading and Unloading*.

The first 6 hours of the Drivers shift was consumed during this period, leaving only 8 hours to accrue CENTS PER KM remunerated duties.

Figure 2

Driver: Trevor Warner
 Date: 17-2-20
 Day of the Week: S M T W T F S
 Time Zone: State/Territory (Driver Base): ACT NSW NT QLD SA TAS VIC WA
 Driver: Standard Standard Bus BFM AFM
 Exemption hours (for this 24 hr period only):

Number Plate Change and Comments (optional): (10) 24
 Odometer Reading: 10053, 10053, 10050, 10051, 10052, 10052, 10070, 10073
 Name of Place at Work and Rest Change: LARAKATA, LARAKATA, WACO, WACO, WACO, WACO, WARRWICH, BOCCABILLA
 Two-up: [blank]
 My Work: 12:00 noon to 8:55 pm
 My Rest: 8:55 pm to 1:25 am, 1:25 am to 5:15 am
 Total Work: 8.5
 Total Rest: 15.5
 Driver Signature: Trevor Warner
 TWO-UP DRIVER'S IDENTIFICATION: [blank]

As can be seen in [Figure 2] the Drivers shift commenced at 12:00 noon 17th Feb, 2020 and in [Figure 3] below, the shift terminated at 5:15am on the 18th Feb, 2020.

Figure 3

Driver: Trevor Warner
 Date: 18-2-20
 Day of the Week: S M T W T F S
 Time Zone: State/Territory (Driver Base): ACT NSW NT QLD SA TAS VIC WA
 Driver: Standard Standard Bus BFM AFM
 Exemption hours (for this 24 hr period only):

Number Plate Change and Comments (optional): 104/24
 Odometer Reading: 100923, 10138, 101674, 101872, 102079
 Name of Place at Work and Rest Change: BOCCA BILLA, COONIA - BARRABRAN, WARRWICH, SANDSTONE REST AREA, SHEPPARTON
 Two-up: [blank]
 My Work: 12:00 noon to 1:25 am
 My Rest: 1:25 am to 5:15 am, 5:15 am to 8:15 am
 Total Work: 15.25
 Total Rest: 8.75
 Driver Signature: Trevor Warner
 TWO-UP DRIVER'S IDENTIFICATION: [blank]

The Driver received a CENTS PER KM travelled remuneration for this shift.

Experienced Drivers often manage fatigue by using Powernaps. These Powernaps are unpaid, therefore the shift was really commenced at 12:00 pm and ended at 3.15 am the following day, travelling a distance of 706 kms.

The stop start rest periods between 12:00 pm and 6:00 pm can be legally recorded in this manner, as the driver was away from the vehicle or in the sleeper berth of the vehicle. However, was on-call and NOT relieved of duties, as per clause 20.4 of the LD Award.

The Driver was driving a Grade 6 vehicle and was paid 46.1 CENTS PER KM as per cl. 13.3 of the LD Award x 706kms travelled. Totalling \$325.46 for the shift OR a real hourly rate of \$22.06.

The base weekly rate as per cl. 13.1(a) of the LD Award is \$886.60. To calculate the hourly rate, the weekly rate has been divided by 38, which is \$23.17 per hour.

[23] Figure 3.1 Is the perfect example of driver exploitation.

The shift started at 5:15 am and ended at 10:00pm and the vehicle odometer started at 249350 and ended at 249784. The driver had to end the shift no later than 10:15pm in order to comply with the Fatigue Laws and only travelled 434kms. The Applicant was driving a Grade 6 vehicle and received 46.1 cents per km. The period from 12:00pm to 3:30pm was essentially on-call time, waiting for freight to arrive and not relieved of duty, unlike a true split shift. Waiting time could have been 30 mins or 4hrs, but in this case, it was 3hrs 30mins. Drivers typically use this waiting time to manage fatigue with a powernap. A Local Driver would have been paid hourly with overtime for these duties.

So here we have a 16.75Hr day and the Applicant received \$225.68 inclusive of Travel Allowance.

DETAILS OF ACTIVITIES FOR THIS DAY

Number Plate Change and Comments (optional)	Odometer Reading	Name of Place at Work and Rest Change	Two-up
	249350	PRINCES HWY TRAVEM DENO	
	249450	REGENCY PARK	
	249461	POORA Hc	
	249478	REGENCY PARK	
	249608	MILANG	
	249784	TINTHARA	

Space for you to calculate your work and rest hours (optional)

5.25
5.50
2.75
1
13.50

My Work: 10.50
My Rest: 13.50

DRIVER SIGNATURE: TREVOR WARNER

TWO-UP DRIVER'S IDENTIFICATION

Two-up Driver's Name: _____ Two-up Driver's Licence No: _____ Two-up Driver: Standard BFM AFM Exemption hours

Two-up Driver's Work Diary & Page No: _____ Two-up Driver's Licence issued: ACT NSW NT QLD SA TAS VIC WA Two-up Driver's Signature: _____

[24] Clearly the above examples demonstrate how the current definition of *Loading and Unloading* is being abused and the LD driver is performing duties covered by both Awards, as outlined in cl. 4.2 and the real rate of pay is LESS THAN the minimum base rate of pay provided for in cl. 13.3(a) of the LD Award. The LD driver essentially receives no benefit for any of the Allowance stated in cl. 14.4(a) of the LD Award, namely the Industry Disability Allowance.

The Transport Operator can eliminate the need for hiring additional employees to provide a PUDS and save on costs.

[25] The same duties can be performed by a driver covered by the Local Award, with this driver potentially receiving a Night Shift Allowance of 30% and Overtime penalty rates.

On top of this Night Shift Allowance, a driver covered by the Local Award ALSO receives additional penalty rates for weekend work and other related allowances as provided for by the Local Award.

[26] For a Driver covered by the LD Award, the cases cited clearly discuss any ancillary duties beyond the driving component are remunerated by the Industry Disability Allowance of 30%.

This creates a significant disadvantage to the LD driver because the Industry Disability Allowance provides compensation for more than a Shift Allowance. Given the extra ancillary duties involved with industry accepted task of *Loading and Unloading*, to suggest this 30% allowance covers these extra duties is insufficiently remunerating the LD Driver.

The Figures 1, 2 and 3 above clearly show the LD Driver is not even receiving the base minimum hourly rate, let alone receive the benefit of the allowance provided for in cl. 14.1(a) of the LD Award.

14.1(a) Industry disability allowance

The rates per kilometre are inclusive of an industry disability allowance of 1.3 times the ordinary rate, which compensates for the following:

- (i) Shift work and related conditions;*
- (ii) Necessity to work during weekends;*
- (iii) Lack of normal depot facilities, e.g. lunch room, wash rooms, toilets, tea making facilities;*
- (iv) Necessity to eat at roadside fast food outlets;*
- (v) Absence of normal resting facilities and normal bed at night;*
- (vi) Additional hazards arising from driving long distances at night and alone;*
- (vii) Handling dirty material;*
- (viii) Handling money;*
- (ix) Extra responsibility associated with arranging loads, purchasing spare parts, tyres, etc;*
- (x) Irregular starting and finishing times; and*
- (xi) Work in rain.*

[27] A Local Driver receives the same remuneration as the LD Driver if engaged in the same Long-Distance operation including a night shift allowance. The driver covered by the Local Award would receive payment for these extra duties AND extra penalty rates for weekend work.




The LD Driver only receives the CENTS PER KM (as per Figure 4.) or Hourly Driving Rate as provided by the LD Award with no additional penalty rates, leaving the LD driver significantly worse off than the Local Driver for the same duties performed.

The payslip in Figure 4. Is a Full-time "Loaded Rate", inclusive of Km rate, Public holidays, RDO's and Travel Allowance. Confirming the Applicant is paid Cents per Km only and no additional monies for all ancillary duties of Loading and Unloading.

The lack of properly remunerated Loading and Unloading, also encourages Road Transport Operators to push drivers to the end of their fatigue limits. The Applicant regularly does 17 hour days, due to the scheduling of all ancillary duties to the current definition of *Loading and Unloading*.

Figures 1, 2 and 3 show a Linehaul driver does not have the burdens of additional duties, yet receives the same remuneration for the relevant Long-Distance Operation and received the full benefit of the allowances provided by the LD Award.

Figure 4.

		ABN. 	
Pay Slip For:	Warner, Trevor Brian	Cheque No:	7165
Classification:		Payment Date:	20/2/2020
Annual Salary:	\$0.00		
Hourly Rate:	\$0.0000		
Pay Period From:	13/2/2020	To:	19/2/2020
		GROSS PAY:	\$2,734.68
Superannuation Fund:		NET PAY:	\$2,051.68

DESCRIPTION	Kilometre	CALC. RATE	AMOUNT	YTD	TYPE
Kilometre Double	5,259.00	\$0.45	\$2,366.55	\$75,934.53	Wages
Meal Allowance/ Kilometre	5,259.00	\$0.07	\$368.13	\$11,845.89	Wages
Holiday Pay			\$0.00	\$2,519.86	Wages
PAYG Withholding			-\$683.00	-\$22,449.00	Tax
Holiday Leave Accrual	2.93			33.83	Entitlements
Superannuation Guarantee			\$259.80	\$8,578.52	Superannuation Expenses

[28] The ability for a Transport Operator to manipulate the meaning of *Loading and Unloading* in order to gain a financial advantage over competitors, is a major component for what the Transport Industry colloquially calls “undercutting”.

In a recent meeting the Applicant had with MP Brendan O’Connors and Senator Glenn Sterle, both politicians labelled this process of undercutting as “the race to the bottom”, and this Application highlights a critical component to that race.

Transport Operators need a clear set of rules which controls the tendering process for securing contracts. If some operators choose to use FREE LABOUR, this disrupts the level playing field, impacts fatigue in Drivers and impacts taxation revenues provided by unremunerated performance of work.

TRAVELLING ALLOWANCE

The Applicant seeks to vary clause 14.2 C (i) – “Travelling Allowance”

OMIT;

“This will not be payable where an employee is provided with Suitable accommodation away from the vehicle.”

[29] An employee covered by the LD Award is provided an allowance for travel, which has an impediment when ascertaining what is “Suitable Accommodation”. The Award does not specify any criteria to measure this provision.

Travelling Allowance is being incorrectly substituted for additional Meal Allowances. In the current version of the Award, where an employer provides accommodation, this allowance is being denied, leaving the employee disadvantaged to other workers who get to go home at the end of their shift. We accept one overtime meal allowance per journey is included in the CENTS PER KM rate.

(c) Travelling allowance⁵

(i) An employee engaged in ordinary travelling on duty or on work on which the employee is unable to return home and takes their major rest break under the applicable driving hours regulations away from home must be paid \$40.44 per occasion. This will not be payable where an employee is provided with suitable accommodation away from the vehicle.

(ii) In exceptional circumstances, where amounts greater than those specified are claimed, an employee will need to demonstrate why the claim is necessary and gain approval from a representative of the employer. Such approval will not be unreasonably withheld.

(iii) If an employee is engaged in more than one long distance operation or part thereof in a fortnight, the allowance due for each long distance operation or part thereof must be separately calculated in accordance with this clause.

[30] Clause 325 [1A] (a) of the Fair Work Act 2009 provides protection for Employee's in incurring costs "in connection" to their employment.

325 Unreasonable requirements to spend or pay amount

- (1) An employer must not directly or indirectly require an employee to spend, or pay to the employer or another person, an amount of the employee's money or the whole or any part of an amount payable to the employee in relation to the performance of work, if:
- (a) the requirement is unreasonable in the circumstances; and
 - (b) for a payment—the payment is directly or indirectly for the benefit of the employer or a party related to the employer.

Note: This subsection is a civil remedy provision (see Part 4-1).

- (1A) An employer (the **prospective employer**) must not directly or indirectly require another person (the **prospective employee**) to spend, or pay to the prospective employer or any other person, an amount of the prospective employee's money if:
- (a) the requirement is in connection with employment or potential employment of the prospective employee by the prospective employer; and
 - (b) the requirement is unreasonable in the circumstances; and
 - (c) the payment is directly or indirectly for the benefit of the prospective employer or a party related to the prospective employer.

Note: This subsection is a civil remedy provision (see Part 4-1).

⁵ LD Award 2010 & relevant variances http://awardviewer.fwo.gov.au/award/show/MA000039#P744_53873

[31] Providing Accommodations away from the vehicle does not imply meals are provided in addition to.

The nature of the Road Transport Industry often means Drivers have to pay higher prices for meals at commercial venues that may or may not also provide accommodation.

The Applicant requests the following be **omitted** so as to provide Drivers with subsidising compensation for the need to pay for higher priced meals in connection with their employment:

["This will not be payable where the employer provides suitable accommodation away from the vehicle"]

[32] The Australia Taxation Office publish each year, what they consider a "Reasonable Amount" per day, a person would spend away from home. In 2019, this amount was set at \$113.70 for Meals and Drinks.

The Taxation Determination for 2019, ATO document TD2019/11, states⁶

Place	Accomm. (\$)	Food and drink (\$) breakfast 28.15 lunch 31.65 dinner 53.90	Incidentals (\$)	Daily total (\$)
Adelaide	157	as above	20.05	290.75
Brisbane	175	as above	20.05	308.75
Canberra	168	as above	20.05	301.75
Darwin	220	as above	20.05	353.75
Hobart	147	as above	20.05	280.75
Melbourne	173	as above	20.05	306.75
Perth	180	as above	20.05	313.75
Sydney	188	as above	20.05	321.75
High cost country centres	see Table 4	as above	20.05	variable
Tier 2 country centres (see Table 5)	134	breakfast 25.20 lunch 28.75 dinner 49.60	20.05	

⁶ <https://www.ato.gov.au/law/view/pdf/pbr/td2019-011.pdf>

[33] The Applicant believes it is unreasonable for a person covered by the LD Award to be denied the “Travel Allowance” provided for in that Award. Pre-shift or post-shift meals are an expense incurred in connection with their employment. The Employee cannot return home at the end of their shift and it is inescapable to incur some extraordinary work-related expense per day.

A person covered by the LD Award has limited options in preparing food purchased from Supermarkets. Employer provided “Suitable Accommodations” does not specify if the facility has a kitchen or cooking facilities.

If the Driver operates a Fatigue Regulated Vehicle, as defined by the fatigue laws, the Driver is restricted from visiting supermarkets to buy food supplies. The Driver may also works hours which are irregular and often doesn’t coincide with normal business hours. It is unreasonable and often impractical for drivers to prepare their own meals at the end of the shift.

[34] A former employer of the Applicant did provide Accommodations. There were totally unsuitable and often Drivers slept in the company vehicles instead of the supplied accommodations. The Drivers never received a Travel Allowance when our shift ended at this location. When we complained, the Employer replied, “there is no law demanding a minimum standard for the Accommodations.”

[35] The Applicant would not expect the LD Award to provide for a full cost recovery of meals, but only to offset the costs of the requirement to purchase commercially prepared meals in connection to employment.

Most other Industries, provided full cost reimbursement or pay a Travel Allowance to cover the costs of Food, drinks and incidentals. The LD Award provides a fraction of what other sectors provide for their employee’s as evidenced below. The current amount provided for in the LD Award is very reasonable for every LD driver who cannot return home at the end of their shift.

Below is clause 19 of the Fair Work Ombudsman’s domestic travel policy, for meals and incidentals only.

https://www.aph.gov.au/~media/Estimates/Live/eet_ctte/estimates/add_1314/answers/employment/EM0323_14_AttachmentA.pdf

19 Meals and incidentals component of the indicative daily cap

- 19.1 A daily allowance is payable for every night spent away from the staff member's home city.
- 19.2 From 1 September 2012, the following meals and incidentals allowances can be claimed by travellers:

	Number of nights away:			
	1	2	3	4
Non-SES officers	\$160	\$280	\$400	\$520
SES officers	\$160	\$280	\$400	\$520

The amounts in the above table only relate to meals and incidental allowances. Total daily caps, including accommodation allowances, are shown in Attachment A. The CFO will determine the allowance for travellers required to be away from home for more than 4 nights. In these cases the traveller should request an estimate by sending an email to [FWO – Travel Queries](#).

- 19.3 An additional \$40 dinner allowance is payable for Non-SES staff whose deemed return time (see Clause 21) is after 7pm following a trip that involves an overnight stay.
- 19.4 Daily allowances for meals and incidentals must be adjusted to take into account any meals provided as part of the travel arrangements. For example, meals provided as part of accommodation, conferences or training. If a conference or course includes

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[36] If a Driver has the opportunity to return home, but chooses to remain at the Employers Accommodations, it would be acceptable that the payment of Travel Allowance would not be required.

[37] CONCLUSION

I believe if this Application is successful, it will provide a landmark solution to bring the Road Transport (Long Distance Operations) Award 2010 into the 21st century and align itself more integrally with the Modern Award objectives and a realistic remuneration for duties performed.

These 2 issues would be the largest issues Long Distance drivers have battled with over the one and a half decades I have been back driving trucks.

The Industry needs to address these inequities in order to encourage new and younger entrants into the Industry. Provide an equal wage opportunity to satisfy *the diversity and inclusion* campaigns currently being promoted in the Road Transport industry.

For Road Transport to function productively and efficiently, the truck driver is vitally important to the Industry and the national economy. Road Transport Drivers need to be remunerated fairly and according to our nations minimum employment standards and to support and maintaining a safe, willing workforce. Currently the industry media reports of Drivers shortages.

In 2018, Forbes Magazine even reported “Truck Driver shortages can be solved by paying drivers for all the work they do”. Other jurisdictions also recognise how truck drivers paid by “cents per km” travelled (or miles) are being exploited by loose definitions of wage legislation.

<https://www.forbes.com/sites/stevebanker/2018/04/30/addressing-the-driver-shortage-by-paying-drivers-for-all-the-work-they-do/#2cc65b791f07>

The screenshot shows a Forbes article page. At the top left is the Forbes logo and a search icon. Below the logo, it says "36,653 views | Apr 30, 2018, 07:54am". The main headline is "The Truck Driver Shortage Can Be Solved By Paying Drivers For All The Work They Do". The author is Steve Banker, a contributor in the Transportation category, with a bio: "I cover logistics and supply chain management." To the right of the article is a sidebar advertisement for PFS, titled "PFS Product & POSM Logistics". The ad text reads: "pfs.com.au", "Product & POSM Logistics", "The leading marketing fulfilment specialist for Australia's top brands". There is also a small image of a woman in a grocery store aisle with the text "declared bankruptcy in November over similar trends in the dairy industry."

Long Distance truck drivers are tired of being exploited and pushed to the upper limits of Fatigue, in order to bolster the bottom line of Road Transport companies.

TREVOR WARNER

Applicant