

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 and The Seagoing Award 2010

SUBMISSION MADE ON BEHALF OF SEASWIFT PTY LTD IN RELATION TO THE STATEMENT OF JUSTICE ROSS, PRESIDENT 18 APRIL 2017 [2017] FWC 2189

Introduction

1. On 24 February 2017, a Full Bench issued a Decision [2017] FWCFB 1138 (**the Decision**) in relation to this matter. The Decision is comprised of a decision of Vice President Watson and a joint decision of Deputy President Gooley and Commissioner Cambridge.
2. The Full Bench determined all issues before it as follows:
 - (a) Award Coverage at [19] and [33];
 - (b) Small Ships Classification at [28] and [132]
 - (c) Casual Classification under Seagoing Industry Award at [30] and [33]; and
 - (d) Electrician/Electro Technical Officer Classification at [31] and [33].
3. At [32], Vice President Watson proposed that Orders reflecting the conclusions of the Full Bench should be made by Commissioner Cambridge. The joint decision did not demur from this proposal.
4. No Orders have been issued in relation to the Decision.

Submissions

5. Section 622 of the *Fair Work Act 2009* (Cth) applies if:
 - (a) A FWC member forms part of a Full Bench in relation to a matter;
and
 - (b) The FWC member becomes unavailable to continue dealing with the matter before the matter is completely dealt with.
6. It is submitted this matter has been completely dealt with in that each member of the Full Bench has determined each of the issues of the matter.
7. It is submitted that the issuing of Orders reflecting the Decision is a procedural formality, the content and substance of which is settled by the Decision.
8. It is submitted therefore that section 622(b) does not apply in respect of this matter.
9. Alternatively, if it is found that section 622 does have application in respect of this matter, it is submitted that pursuant to section 623, any FWC member appointed to the Full Bench by the President must take into account everything that occurred before the FWC and everything that the FWC did before the FWC member began dealing with the matter, and could participate in the matter solely for the purpose of ensuring that the Orders made faithfully reflect the Decision.

(Signed)



Associate Director, Livingstones

Agent for Sea Swift Pty Ltd