

IN THE FAIR WORK COMMISSION

4 yearly review of modern awards

Sugar Industry Award 2010

Matter no: AM2017/56

Submissions by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia – Electrical, Energy and Services Division (CEPU) in respect of the apprentice tool allowance draft determination

Introduction

1. On 14 September 2018, Deputy President Asbury provided directions for the CEPU to file submissions regarding concerns conveyed in the joint report back from AiG, dated 14 September 2018.
2. The CEPU supports and adopts the AMWU's submissions claim to insert a tool allowance for apprentices in the *Sugar Industry Award 2010*[MA000087].¹
3. However, the CEPU has concerns regarding the Draft Determination, namely:
 - i) clause 22.31(f)(ii) of the Draft Determination; and
 - ii) clause 22.31(g) of the Draft Determination.
4. Each is addressed in turn.

Clause 22.31(f)(ii) of the Draft Determination

5. As drafted clause 22.31(f) would have an adverse effect on apprentices who do not complete an apprenticeship where termination is not at their initiation. For instance, if an apprentice becomes redundant due to their employer entering liquidation, the apprentice will be penalised by either:
 - i. returning the Apprentice Tool Pack, meaning they have derived a lesser benefit from the time; or
 - ii. reimbursing the monetary value of the Apprentice Tool Pack at the time it was supplied to them.

¹ Submission and Witness Statements 29 May 2018,
<<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201756-sub-ws-amwu-290518.pdf>>.

6. Clause 22.31(f)(ii) provides an option for the apprentice to reimburse the employer the value of the Apprentice Tool Pack, at the value rate at the time of supply.
7. The CEPU submits that it would be unreasonable for an apprentice to repay the employer the value rate of the Apprentice Tool Pack when it was initially provided; rather than the depreciated rate or market rate of the Apprentice Tool Pack.
8. The *Fair Work Act 2009 (Cth)* ('FW Act') contains specific provisions regarding circumstances where an employer may make deductions from an employee's payment.
9. Section 323 of the FW Act requires an employer to pay an employee what is owed in relation to work performed. However, section 324 provides exceptions to this obligation, which allows employers to make deductions if:

(a) the deduction is authorised in writing by the employee and is principally for the employee's benefit; or

(b) the deduction is authorised by the employee in accordance with an enterprise agreement; or

(c) the deduction is authorised by or under a modern award or an FWC order; or

(d) the deduction is authorised by or under a law of the Commonwealth, a State or a Territory, or an order of a court.

Note 1: A deduction in accordance with a salary sacrifice or other arrangement, under which an employee chooses to:

(a) forgo an amount payable to the employee in relation to the performance of work; but

(b) receive some other form of benefit or remuneration;

will be permitted if it is made in accordance with this section and the other provisions of this Division.

Note 2: Certain terms of modern awards, enterprise agreements and contracts of employment relating to deductions have no effect (see section 326). A deduction made in accordance with such a term will not be authorised for the purposes of this section.²

10. Written authorisation from the employee must specify the amount of the deduction and authorisation may be withdrawn in writing by the employee at any time.³

² S324(1)(a)-(d) of the *Fair Work Act 2009 (Cth)*.

³ S324(2) of the *Fair Work Act 2009 (Cth)*

11. Furthermore, section 326 of the FW Act states:

326 Certain terms have no effect

Unreasonable deductions for benefit of employer

(1) A term of a modern award, an enterprise agreement or a contract of employment has no effect to the extent that the term permits, or has the effect of permitting, an employer to deduct an amount from an amount that is payable to an employee in relation to the performance of work, if the deduction is:

(a) directly or indirectly for the benefit of the employer or a party related to the employer; and

(b) unreasonable in the circumstances.

(2) *The regulations may prescribe circumstances in which a deduction referred to in subsection (1) is or is not reasonable.*

[...]

Deductions or payments in relation to employees under 18

(4) *A term of a modern award, an enterprise agreement or a contract of employment has no effect to the extent that the term:*

(a) *permits, or has the effect of permitting, an employer to deduct an amount from an amount that is payable to an employee in relation to the performance of work; or*

(b) *requires, or has the effect of requiring, an employee to make a payment to an employer or another person;*

if the employee is under 18 and the deduction or payment is not agreed to in writing by a parent or guardian of the employee.

12. Referring to section 326(1) of the FW Act, concerns arise as to whether clause 22.3(f)(ii) is a term that will have no effect as:

- i. the Employer is deriving benefits from the use of the Apprentice Tool Pack in the course of the apprenticeship; and
- ii. it would be unreasonable to place a large financial burden on an apprentice to repay the employer the value of the Apprentice Tool Pack at the time it was

supplied, rather than at market value. Furthermore, in the context of the apprentice not able to complete the apprenticeship because they become redundant, it would be unreasonable to put apprentices in this position.

13. There is no incentive for clause 22.31(f)(ii) to operate if the apprentice is going to be substantially out of pocket. For instance, an Apprentice would be more inclined to return the Apprentice Tool Pack than pay total retail value of tools ranging from \$1350 to \$2250, based on the figures provided in the Draft Determination.
14. The Draft Determination fails to take section 326(4) of the FW Act into consideration. It requires a parent or guardian to agree in writing for any deductions on an amount payable in relation to the performance of work for apprentices under the age of 18 years.
15. The CEPU submits that clause 22.31(f) is to be amended as follows:

(f) If the apprentice does not complete the apprenticeship with their employer because the apprentice resigns or is terminated for reasons of misconduct:

i. the Apprentice Tool Pack must be returned to the employer; or

ii. the market value of the Apprentice Tool Pack, at the time the apprentice ends their employment with the employer, must be reimbursed to the employer.

Clause 22.31(g) of the Draft Determination

16. The CEPU has concerns regarding clause 22.31(g) of the Draft Determination. Specifically, when an apprentice is unable to complete their apprenticeship because the employer has made the apprentice redundant. Again, the apprentice is put in a disadvantageous position to then be required to either pay a large amount of money back to the employer because of the employers' operational decisions or bankruptcy.
17. The CEPU submits that clause 22.31(g) is to be amended as follows:

(g) Where the apprentice was provided an apprentice tool allowance paid in a single instalment, the pro rata value of the allowance for the incomplete portion of the apprenticeship, due to the apprentice resigning or being terminated for reasons of misconduct, must be refunded by the apprentice to the Employer within three months of the end of employment

Conclusion

18. Whilst the Draft Determination would greatly assist apprentices in the Sugar Industry, the current form of the Draft Determination has room for improvement to ensure apprentices do not have to endure unnecessary financial through no fault of their own.
19. The CEPU's amendment to the Draft Determination would greatly improve the current Draft Determination to ensure further protections for apprentices in the Sugar Industry.

CEPU

20 September 2018