

From: Bill Chesterman <bchesterman@vacc.com.au>
Sent: Monday, 20 April 2020 8:18 AM
To: Chambers - Bissett C <Chambers.Bissett.c@fwc.gov.au>
Subject: Motor Trades Organisations Submissions meal break provisions 17 April 2020 final

Dear Commissioner

On re reading the [submission](#) I filed on Friday I noted there was an error in numbering of paragraph 16 at the top of page 4 . The content of this paragraph should be read as part of paragraph 15 so I have attached an amended submission. Apologies for the drafting error.

Kind Regards,

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Joint report to Commissioner Bissett

-and-

Motor Trades Organisations supplementary submissions

1. On 3 April 2020, Commissioner Bissett directed the parties to file a joint report relating to two award issues raised by the parties at the telephone conference arising out of a decision of the Full Bench of the Fair Work Commission, (the Commission) dated 23 March 2020.¹
2. The two issues related to:
 - (a) Ai Group's submissions filed on 28 February 2020 relating to the Vehicle Repair, Services and Retail Exposure Draft 2020 (**VRSR draft**) issued by the Commission on 14 February 2020, and
 - (b) A submission filed by the Motor Trades Organisations on 28 February 2020.
3. Both submissions covered structural changes to the meal break provisions in **Clause 26** of the **VRSR Draft** relating to the omission of the classification of "console operators" in clause 26.1 and some structural rewording of this clause and the relocation of clause 26.4 – "Minimum Break between shifts" to **Clause 24 – Overtime** in the VRSR Draft.

Clause 26.4 - Minimum Break between Shifts

4. In its submission to the Commission on 28 February 2020 the Motor Trades Organisations submitted that clause 26.4 had been incorrectly inserted in the Meal Break clause when the current award was restructured in a Vehicle Manufacturing, Repair, Services and Retail Exposure Draft issued by the Commission in 2015. The relocation of the clause was not a matter which was agreed between the parties.

¹ [2020] FWCFB 1541

The Motor Trades Organisations and Ai Group considered that the relocation of the clause would create more than a structural change to the Meal Break clause if it was to remain in this clause.

5. The Motor Trades Organisations submitted the clause should be relocated in **Clause 24 – Overtime** and renumbered as clause 24.12. This clause is currently in clause 28.6 – “Rest Period before commencing work” in the VMRSR Award. If the Commission accepted these submissions the existing sub clause 24.11 “*Breaks During and after Overtime*” would need to be retitled “Overtime Crib Breaks” and amended to read “*an employee is entitled to overtime crib breaks in accordance with clause 26.3*”.
6. The Motor Trades Associations have had discussions with the AiGroup regarding this variation to clause 26.4 and have had the opportunity to read the submissions and Annexures filed by the AiGroup and agree with the variation set out in the Joint Report to relocate the “**Minimum Breaks Between Shifts**” clause.

Structural changes to Clause 26.1 and Clause 26.2 – Meal Breaks

7. The joint report filed by the Ai Group states that “The parties agree that structural changes to the exposure draft in the early phases of the 4-yearly review of modern awards combined with the removal of the general exclusion for console operators in the ‘meal and rest breaks’ provision of the Vehicle Award, as outlined in AiGroup’s 28 February 2020 submission, may inadvertently result in an interpretation of clause 26 and 27.1 in the VRSR Award not contemplated by the parties.”
8. This change does not reflect the agreement reached between the parties to link clause 27.1 (a) under the special provisions for driveway and roadhouse attendants and console operators, with the general meal and rest break provisions of the award in clause 26.1.
9. The Motor Trades Associations agree with the AiGroup’s submissions highlighting the potential problems caused by the current wording if not altered as set out in paragraphs 2.a,b,i, ii and iii and c.

Motor Trades Association supplementary submission

10. In the joint report the AiGroup indicated that the Motor Trades Associations would file a supplementary submission to relation to the proposed variation to correct the structural issues highlighted in the report. The Motor Trades Organisations support the exclusion of the Console Operator in clause 26.1. and 26.2 as outlined in **Annexure A**, however our primary approach is

reflected in the terms contained in **Annexure B** as we will expand on in this supplementary submission.

11. The current meal break clause in clause 26 in the VMRSR Award, which includes an exclusion for persons principally employed to perform vehicle sales related duties, console operators or to employees on continuous shift work was inserted in this modern award by a Full Bench of the then Australian Industrial Relations Commission at the conclusion of Stage 3 of the award modernisation process.²
12. The consultation process leading to the finalisation of the modern award involved a comprehensive examination of the fuel retailing sector and the role of a console operator on rosters in an industry which in many cases operates on a 24 hour / 7 day basis. Unfortunately, the same scrutiny was not applied to the role of a roadhouse attendant or driveway attendant which were also existing classifications in the award.
13. In issuing their decision in respect to a new modern VMRSR Award 2010 the Award Modernisation Full Bench made the following ruling in respect to the fuel retailing sector:

“**[271]** Consistent with unification of the vehicle awards, and notwithstanding the representations of the Shop, Distributive and Allied Employees Association, we have preserved the existing classification structures, including provisions as to the retailing of fuel and other commodities through the console operations which characterise modern service/petrol stations and which have been the subject of review in several earlier commission proceedings.”

Exclusion of Roadhouse Attendants and Driveway Attendants in the meal break clause

14. During the conference on 3 April 2020, the Motor Trades Associations raised a potential ambiguity with the current wording of the meal break clause as it excluded the roadhouse attendant and driveway attendant classifications. **Clause 27.1 – Hours of Work** in the VRSR Draft includes all three categories covered under the Special Provisions relating to driveway attendants, console operators and roadhouse attendants. No single category is excluded from the operation of clause 27.1 (a).
15. Roadhouse Attendants, particularly in country and regional areas can be rostered to work on a 24 hour/7 day basis to provide meals to transport drivers and other customers, just like console operators. It was suggested during the conference that in order to allow consideration of

² Full Bench AM 2008/ 25-63: Australian Industrial Relations Commission, Statement and decision, award modernisation [paragraphs 270 -274] – 4 September 2009

extending the exclusion clause to these additional categories of employees that an alternative be included in the joint report .

16. The Motor Trades Associations support the inclusion of an **Annexure B** in the Joint Report and extending the exclusion in the meal break provision to these additional categories to remove any potential ambiguity in the interpretation of the two clauses. To exclude the application of clause 26.1 - to roadhouse attendants and driveway attendants would be inconsistent with the preamble in clause 27.1 (a) which clearly covers all three categories and would consequently result in the ambiguity as to how the meal and rest break provisions would in fact apply to roadhouse and driveway attendants.
17. The variations proposed would provide consistency in the application of the clauses 26 and 27 and would address any ambiguities that would otherwise occur if not dealt with. If these matters were uncovered and discussed during the award review process, there is every likelihood that the issues would have been addressed at the time. However, although it is late in the process, we would ask the Commission to approve the variations sought for the reasons identified above in finalising the reviewed award.

Friday, 17 April 2020

