

IN THE FAIR WORK COMMISSION

Matter No: AM 2014/47

Title S 156 - Four Yearly Review of Modern Awards – Annual leave common issue –
Security Services Industry Award

Outline of Submission

30 June 2016

Introduction

1. These submissions are made pursuant to the amended directions issued by the Fair Work Commission on 20 June 2016.
2. United Voice supports the incorporation of the 'Cashing out of annual leave' model clause into the *Security Services Award 2010* ('the Award').
3. United Voice notes the submissions made by MSS Security Pty Ltd ('MSS') on 30 January 2016. We note that MSS wishes to pursue several changes to the proposed clause 24.11 – Cashing out of annual leave.
4. United Voice opposes the changes to the model clause proposed by MSS.

General submissions

5. No evidence has been provided that would contradict the Full Bench's decision in *4 Yearly Review of Modern Awards – Annual Leave Decision*¹ ('the June Decision') that varying all modern awards (including the award) to incorporate the model term would ensure that each award provides a fair and relevant minimum safety net, is necessary to achieve the modern and is consistent with the objects of the Act.²
6. Further, no evidence has been provided of circumstances specific to the security services industry that require any alteration of the model term. In the absence of evidence of a custom in the industry regarding the cashing out of annual leave,. As far as United Voice is aware, there is no custom in the security industry regarding the cashing out of annual leave. There is no evidence of any historical, widely known or accepted practice for cashing out annual leave in the industry.

¹ [2015] FWCFB 3406,

² *ibid*, [264]-[267].

7. Contrary to their submission, MSS is asking the Fair Work Commission to align the safety net with their specific work practices. MSS cite no other reason for opposing the wording of the model clause other than that it would require them to change administrative practices where they currently have agreements that provide for the cashing out of annual leave.

The issue of agreement

8. MSS proposes to vary model clause 24.11 (b) (ii) to remove the requirement to record:
 - a. The amount of the 'payment to be made to the employee'; and
 - b. the date on which the payment is to be made.
9. To support its claim, MSS notes a number of administrative difficulties that may arise if this information is required to be recorded in the cashing out agreement. It is problematic to characterise the fairly minute level of detail required by the proposed in the Award as a regulatory burden.
10. The model clause 24.11 describes a record of the agreement, not the process by which the agreement is made. It should therefore be a record of the whole agreement between employee and employer to cash out annual leave. If there is 'going back and forth' between the employee and employer, it will occur before the agreement is made.
11. We note that MSS objects to the recording of the amount of the payment made to the employee under the agreement. This requirement ensures that the payment made arises from a genuine agreement. If the employee and employer are in dispute over the quantum of payment, it cannot be said that they have reached agreement.
12. Likewise, the date on which payment is to be made is an important part of the agreement between employee and employer. We note MSS concern that there may be circumstances where payment on the exact date is impossible. If this occurred, it would not frustrate the purpose of the clause.
13. Further, this date and amount is only that which is required by regulation 3.36 (2) of the *Fair Work Regulations 2009*:

If an employer and employee agree to cash out an accrued amount of leave:

 - (a) a copy of the agreement is a kind of employee record that the employer must make and keep; and*
 - (b) a kind of employee record that the employer must make and keep is a record that sets out:*
 - (i) the rate of payment for the amount of leave that was cashed out; and*
 - (ii) when the payment was made ..*

14. The employer will be required to make an employee record containing the date and the amount of the payment made to the employee even if this requirement is not incorporated into the Award

Issue of the amount that should be paid on cashing out of annual leave

15. Clause 24.11 (b) (iii) merely restates the employee's entitlement under the minimum requirements set by for a term providing for cashing out of paid annual leave by s 93 (2) of the *Fair Work Act 2009*.
16. The term proposed by MSS provides an inferior entitlement and is therefore inconsistent with the NES. For this reason, it should not be supported.

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