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20 November 2015

Re: AM2014/79 AWU reply submissions on the Exposure Draft for the Mining *Industry Award 2015*

Background

1. These submissions follow the 4 Yearly Review of Modern Awards Full Bench's Decision on 23 October 2015 regarding Group 1C, 1D and 1E awards.

2. This Decision directed parties to file feedback on the revised Exposure Drafts by 4:00pm on 20 November 2015.

3. The Australian Workers' Union's submissions in relation to the Exposure Draft for the *Mining Industry Award 2015* (Exposure Draft) as republished on 2 November 2015 appear below.

Technical issues

4. Clause 6.3 (d): Given this award has all purpose allowances, the wording used should be:

   For each ordinary hour worked, a part-time employee will be paid no less than the ordinary hourly rate of pay for the relevant classification in clause 9.

5. Clause 6.4 (c): This clause has not been adjusted in accordance with the Full Bench's Decision on 30 September 2015[1] regarding the calculation of casual loading. The clause should read:

   A casual employee will be paid:

[1] *4 yearly review of modern awards* [2015] FWCFB 6656 at [110]

(i) *the ordinary hourly rate for the classification in which they are employed; plus*

(ii) *a loading of 25% of the ordinary hourly rate.*

6. Clause 6.5: We submit it is appropriate for the probation period clause to be deleted as it could misleadingly indicate that an employee does not have unfair dismissal rights when they actually do. This can arise because the probationary period can be more than 6 months if the period is "reasonable, having regard to the nature and circumstances of the employment".

   In addition, it would appear difficult to establish that it is *necessary* to have a probation clause in a modern award, particularly in circumstances whereby they do not currently appear in many (if not most) modern awards and no issues seem to have arisen.

7. Clause 10.1 (a) (v): We support the insertion of the word "loading" to clarify that an annual salary cannot be paid to compensate for annual leave. It appears if this amendment is not made the provision may contravene the NES and hence not be enforceable as an employee's entitlement to annual leave under the NES cannot be removed in an award.[2]

8. Clause 13.1: The references to afternoon shift should be removed from the definition of "permanent night shift" for self-explanatory reasons.

9. Clause 14.1: The start of this clause should be amended to read:

   Except where provided otherwise in clause~~s 13 and~~ 14, an employee who is not…

   The inclusion of reference to clause 13 creates ambiguity because clause 13 provides penalty rates for ordinary hours and clause 14 deals with overtime – they are entirely separate entitlements.

10. Clause 20.2: There is a typo – the provision should read: "…the employer may withhold from any money due to the employee…"

11. Schedule B: We note casual overtime rates have not been included.

[2] This was recently confirmed in *4 yearly review of modern awards – Alleged NES Inconsistencies* [2015] FWCFB 3023 at [17]

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