

AM2019/20

Saturday, 11 July 2020

Proposed Variation under section 160 of the Fair Work Act 2009 to:

Manufacturing and Associated Industries and Occupations Award 2010 - Clause 32.14 Standing By

Submitted by Garry Whackett

Matter Number AM2019/20

I have no objection to a further extension of time for the AI Group's submission. I appreciate these are unusual times and everybody is having unusual demands placed upon them.

I WOULD HOWEVER SEEK TO PREVAIL UPON THE AI GROUP OR ANY OTHER PARTY SEEKING TO OPPOSE MY AMENDMENT, WITH A REQUEST THAT THEIR SUBMISSION SHOULD ADDRESS **THE ENTITLEMENT OF A START UP ENTERPRISE TO AN EXEMPTION** AS A PRIORITY AND THIS SHOULD BE THE FIRST ISSUE ADDRESSED BY THEIR SUBMISSION.

This should be treated as a threshold question. If you can't show how a start up enterprise qualifies to be exempt from the rate of pay prescribe in the award, then the accepted interpretation does not work in this circumstance and therefore, the accepted interpretation is fatally flawed.

For your objection to be successful and the status quo to remain, you must be able to show that even a start up company under this award provision can meet the requirements for having a custom prevailing on the first instant of engaging an employee on standby. Every company currently employing staff on standby under this award provision was at some stage a start up enterprise under this exemption stipulation. If no new start up company can meet the requirement for an exemption, there is no need for an exemption in the Standby clause 32.14. It just creates uncertainty.

The currently accepted definition of Custom Prevailing from the Fair Work Ombudsman's document page reference K600586 'Custom prevailing' means that standing by **IS** a routine, regular and expected part of the work.

Please explain how any new starting up enterprise under the current award can meet the Fair Work Ombudsman's requirement of having a standing by practice that IS a routine and regular part of work on the first instance of engaging an employee on standby.

Planning to make standby a routine and regular part of work does not actually qualify as having a standing by practice that IS a routine and regular part of work. But, if you can justify an exemption for all start up enterprises, we still have an award Clause 32.14 that says, if I am regularly required to be on standby, I'm **NOT entitled to any payment**, yet if I'm regularly required to be on standby **I MUST be paid** per the award rate. *Therefore change is still necessary to remove uncertainty and ambiguity.*

By treating this question as a threshold that must be crossed, perhaps everybody's time will be saved. If you have no answer, please don't waste your time trying to cobble together some legalistic smoke and mirrors trickery to distract us from the weaknesses in your objection.

You are free to choose to ignore this request, but it will definitely create a major credibility issue with your objection if this question is ignored.

This document is just to confirm I have no objection to a small time extension for those opposing my application. I also wish to suggest that this question to clarify the entitlement of any start up enterprise to qualify to be exempt from paying the award wage should be a threshold question that will quickly establish if there is substance to any opposition to my application before too much valuable time is expended.

I refer you to my previous submission date 30/6/20 that has much more detailed information. In addition to this specific question, I am still expecting any opposition to my amendment to address and challenge the validity of the arguments I put forth in that document. I encourage you to challenge them or are you happy to have them stand unchallenged? If they were to remain unchallenged could that be taken that my observations and assertions are valid?

Sincerely

Garry Whackett