

From: Celeste Miller <Celeste.Miller@unitedworkers.org.au>
Sent: Friday, 19 March 2021 3:50 PM
To: AMOD <AMOD@fwc.gov.au>
Subject: AM2020/104 - Application to vary 15.2 of the Horticulture Award

Dear Award Modernisations Team,

The United Workers Union foreshadowed in filing our materials for the above variation application, that we would be seeking to confidentiality orders in relation to one witness.

We attach a redacted (personal details) statement we seek to file and the application for confidentiality orders. An unredacted version may be made available to the Commission if required at a later stage.

Yours sincerely,

Celeste Miller

Industrial Officer | Farms

United Workers Union

**Please note my work days are Tuesdays, Thursdays and Fridays*

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FAIR WORK COMMISSION

Matter No.: AM2020/104

Horticulture Award 2020

STATEMENT OF WITNESS 1

I, [REDACTED], farm worker of [REDACTED], say:

1. Where I refer to a conversation in this statement and I cannot remember the exact words used, I have stated my best memory of the words spoken, or the effect of what was said.
2. I am a member of the United Workers' Union.
3. I am 46 years of age.
4. I am a single person. I am responsible for supporting and sending money to my elderly mother and my younger sister, who are not working and living in my country of origin. I send money to them every month.

PIECE RATE JOBS

Small Grape Farm 1

5. In or about January 2020, I worked at a small grape farm in the Sunraysia region. I was employed by a contractor . I picked red and green grapes, I was paid \$3/box (for bunchbag) and \$3.50/box (for open box). My work hours would be depending on the weather. I would generally work from about 7:00AM to 5:00PM, and I would get a full ten hours of work for about 4-6 days in any week.

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Union

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6. I found that both the “bunchbag” and “openbox” methods are equally as hard to do, so I don’t know why the piece rates were different. The contractor never explained the reason to us. “Openbox” just means that the bunches picked are bigger and one box would fit around 7-8 bunches. With “bunchbags” the bunches of grapes are smaller so 10-12 bunches would fit in a box or polystyrene. The contractor said we must only pick grapes that are not bad quality, such as “chickens” and “mini-barbs”. They also had to have “full colour” which means they are bright red or bright green. Chickens are very small grapes and mini-barbs are grapes that have termites on it and are very soft. These grapes are not acceptable to be picked.
7. When the grapes are good quality, in one hour I can make about 10 to 12 boxes. When the grapes are mostly bad with a lot of “chickens” and “mini-barbs”, I can only make about 1 to 2 boxes in one hour. If it was half good and half bad quality, I can make about 4 to 5 boxes per hour.
8. I would count my own boxes but then the contractor would say I picked less. For example, I would pick 45 boxes and note it down and the contractor would say words to the effect of “we only counted 44 boxes for you, what you picked wasn’t good enough and you have to redo.” Sometimes they would say words to the effect of “okay I will pay you for that extra box,” and I would wait for the money and it never comes in.

Small Grape Farm 2

9. For a very short period of time in about February 2020, I also worked at another small grape farm in the Sunraysia region.
10. The contractor offered to pay me \$1.40/box for grape picking which I thought was very, very low. I said words to the effect of “I need a higher rate to make money” and he responded “if you don’t like it, you can go!”, using words to that effect. So I left that job.

Medium Fruit Farm

11. For two weeks in about January 2020, I started working at a medium sized fruit farm picking grapes and was paid \$3.50/box for an open box. I worked from about 7:00AM until about 5:00PM, 6-7 days a week.

12. From about August 2020 until about October 2020, I also worked at the same farm picking avocados. This was a group pick, where 12 people would pick together and the total would be paid equally between 12 of us. We were paid \$27/bin. If there was good fruit we could pick 24 bins/day and earn around \$100 each. Usually the fruit is not good quality so I could only make \$60-70/day. I would usually work 7 days a week. My work hours would be from about 7:00AM to 5:00PM, depending on weather. If it is hot I would finish at about 1:00PM. If it rains, the workers would stop and go home.
13. From about August 2020 until about October 2020 I also worked at the same farm picking mandarins over winter. I would switch between picking avocados and mandarin during this period. As a group we were paid \$30/bin. The total bins picked will be split between a group of 12 as well. I would earn about \$120 per day working in this group size. I would usually work from about 7:00AM to about 5:00PM. If it gets really cold, I and other co-workers would arrive at the farm and wait for the frost to go away. This sometimes can be up to one hour of waiting with no pay, so that we would start at about 8:00AM.
14. When I picked avocados and mandarin at the farm, the supervisor would sometimes say to my co-workers and me: "You missed fruit. Go back, check and pick again until they are cleared out from the trees". I did not get paid for this. This job was 'cleaning the trees'. Sometimes it would take up to 2 hours just to check, go through all the leaves and trees. I found it to be hard work for no pay. I saw other co-workers complain and the supervisor would yell at them, so I did not say anything.

Medium Sized Grape Farm

15. For about five weeks from about the last week of April to the about the first week of June 2020, after not having work for almost two months when COVID hit, I started doing maintenance work for a contractor at a medium sized grape farm in the Sunraysia region. The work was a few types of maintenance for grapes, such as rolling and pulling.
16. For rolling work, I was paid \$1.80/tree. There are usually about 90 trees in one row in the grape vines. It is a very hard job, especially because it's really cold in winter and this is when the work starts. My hands would be so cold and start becoming really painful over time. At this time I felt confident to do rolling work so I would spend many

hours doing the work to make money. In one day I could do around 2.5 rows by myself and this would usually be from about 8:00AM to about 4:00PM. Sometimes I will work until about 9:00PM with a flashlight to finish 3.5 rows in one day. I found that working until late at night was the only way I could make enough money from this job and if I worked until about 9:00PM I could make about \$900/week. I saw workers without experience would only get \$200-\$300/week at most if they work until about 4:00PM. I would work up to 6 days a week.

17. For pulling work, I received \$0.45/tree. I only did one row, which is about 90 trees last year. I found it also to be a very hard job as you will need a lot of physical energy to pull the wires in the grape vines. I thought the rate was so low it wasn't worth my energy. I would work up to 6 days/week.

18. From what I have seen, for maintenance work in grapes in the Sunraysia region, especially if you're a new worker, you will never be able to get more than \$300/week for 7 days/week of work.

Piece Rate and Employment Factors

19. For these piece rate jobs, I am not sure if any of the contractors kept records of our rates or how many boxes or bins that we picked.

20. I have never been given a piece work agreement. I did not know I had the right to negotiate and agree on a rate before I joined the Union. The Union told me my rights. Although I think it is hard to know what an average worker is because every person is different and has different levels of experience.

21. I did not ever receive any payslips from contractors. Mainly, I was only given an envelope with cash in it or just cash on it's own. The envelope might have something like "[My Name] – 40 x \$3.50" which is the number of boxes I would pick and the rate for the week.

22. I did not get much information about piece rates from a contractor before I started work. The contractor would just tell me what the rate is on the day I start, but sometimes he will change it to a different rate the next day or move me to another farm with no explanation why.

23. I have been able to take breaks in the work I have done. But contractors say things to me like: “if you want to make money you should work.” “If you don’t work, you don’t get any pay” and “If you rest too long, your earnings will be less”.

24. If while I was working it got really hot (35+ degrees) I would sometimes finish work early. Some places would tell me and my coworkers to finish early. Some others say words to the effect: “leave if you want to but you will not make money.” If it rained heavily, I usually wouldn’t work. If I did work in the rain the rate would be the same.

Income and Expenses

25. My weekly expenses are below and they have been similar for the last few years:

Rent payments:	\$80/week
Household bills (utilities, telephone, internet):	\$54/week for electricity, \$40/month for optus recharge card
Groceries:	\$50-100 week
Transport (petrol, tickets):	\$100/week petrol
Other household expenses (health, school, etc):	\$700/month for family
Total:	\$469-519pw

26. Sometimes I can’t buy meat such as chicken. I often only eat bread, instant noodles and some rice. The 5kg rice that I buy, I would save it for two months of stocked up groceries. I can’t eat as much and live on very little.

27. When COVID hit I did not have work from early March 2020 until the end of April 2020. During this time I could not buy food as I had no savings from working on piece rates. I survived on mainly bread. I couldn’t even afford rice and would get hungry in the middle of the night. I was going through a high level of stress at this time and it was one of the lowest points of my life.

28. During COVID as well when I had no money, the owner of where I used to live would still expect me to pay rent for those weeks I had no work. He would knock on my door once every week asking for money and said “when are you going to pay your rent? I

don't want to hear about your personal problems, I want you to pay up." I always had to negotiate to buy more time to pay my rent. At the moment I still owe him money which I am slowly paying back.

29. Because I am responsible for sending money to my elderly mother and young sister in my country of origin I often have had to postpone sending the money.

30. My car is old and has a lot of issues as well. I had to spend hundreds of dollars to pay the mechanic to fix my car, up to \$850 once. I had to negotiate to pay the mechanic in weekly instalments for this as well as I had almost no money to eat otherwise. Travelling on gravel roads and on farms requires higher maintenance for my car and it easily breaks down.

31. I am a smoker and try really hard to cut down on my smoking too because cigarettes are expensive here in Australia. Some might say this might be a good thing but I find working as a farm worker is a really tough environment, and for me, smoking helps me to keep going.

Current/Future Circumstances

32. I left piece rate work because the weekly pay is too low, it's hard to make more than \$900/week. Even with experience and working more than 12 hours a day I found it is hard to make enough. I am now working in an hourly paid job on a farm.

33. I prefer working directly with the farm company and get paid hourly under the legal minimum wage.

34. If I was able to get a piece rates job with a guarantee of a minimum of hourly wage for 38 hours a week that would be good. Especially if I could still pick more. I think we farm workers need to be paid enough money to at least survive and a guaranteed hourly wage would help with that.

Witness Signature

Witness Name (printed)

Date:

Form F1 – Application (no specific form provided)

Fair Work Commission Rules 2013, subrule 8(3) and Schedule 1

This is an application to the Fair Work Commission.

The Applicant



These are the details of the person who is making the application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

If the Applicant is a company or organisation please also provide the following details

Legal name of business	United Workers' Union
Trading name of business	United Workers' Union
ABN/ACN	52 728 088 684
Contact person	Celeste Miller

How would you prefer us to communicate with you?

Email (you will need to make sure you check your email account regularly)

Post

Does the Applicant have a representative?



A representative is a person or organisation who is representing the Applicant. This might be a lawyer or paid agent, a union or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative's details below

No

Applicant's representative



These are the details of the person or business who is representing the Applicant.

Name of person	Celeste Miller		
Firm, union or company	United Workers' Union		
Postal address	212 Liverpool St		
Suburb	Hobart		
State or territory	TAS	Postcode	7000
Phone number	03 6220 3222	Fax number	N/A
Email address	celeste.miller@unitedworkers.org.au ; tas@unitedworkers.org.au		

Is the Applicant's representative a lawyer or paid agent?

Yes

No

The Respondent



These are the details of the person or business who will be responding to your application to the Commission.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

If the respondent is a company or organisation please also provide the following details

Legal name of business	
Trading name of business	
ABN/CAN	
Contact person	

1. The Application

1.1 Please set out the provision(s) of the Fair Work Act 2009 (or any other relevant legislation) under which you are making this application.

593 Hearings

(1) The FWC is not required to hold a hearing in performing functions or exercising powers, except as provided by [this Act](#).

(2) If the FWC holds a hearing in relation to a matter, the hearing must be held in public, except as provided by [subsection \(3\)](#).

Confidential evidence in hearings

(3) The FWC may make the following orders in relation to a hearing that the FWC holds if the FWC is satisfied that it is desirable to do so because of the confidential nature of any evidence, or for any other reason:

- (a) orders that all or part of the hearing is to be held in private;
- (b) orders about who may be present at the hearing;
- (c) orders prohibiting or restricting the publication of the names and addresses of persons appearing at the hearing;
- (d) orders prohibiting or restricting the publication of, or the disclosure to some or all of the persons present at the hearing of, the following:
 - (i) evidence given in the hearing;
 - (ii) matters contained in documents before the FWC in relation to the hearing.
- (4) [Subsection \(3\)](#) does not apply to the publication of a submission [made](#) to the FWC for consideration in an [annual wage review](#) (see [subsection 289\(2\)](#)).

594 Confidential evidence

(1) The FWC may make an order prohibiting or restricting the publication of the following in relation to a matter before the FWC (whether or not the FWC holds a hearing in relation to the matter) if the FWC is satisfied that it is desirable to do so because of the confidential nature of any evidence, or for any other reason:

- (a) evidence given to the FWC in relation to the matter;
- (b) the names and addresses of persons making submissions to the FWC in relation to the matter;
- (c) matters contained in documents lodged with the FWC or received in evidence by the FWC in relation to the matter;
- (d) the whole or any part of its decisions or reasons in relation to the matter.
- (2) [Subsection \(1\)](#) does not apply to the publication of a submission [made](#) to the FWC for consideration in an [annual wage review](#) (see [subsection 289\(2\)](#)).

2. Order or relief sought

2.1 Please set out the order or relief sought.



Using numbered paragraphs, set out what you are asking the Commission to do.

Pursuant to sections 593-594 of the Fair Work Act 2009, in relation to the conduct of this proceeding, the Fair Work Commission orders:

1. The name and address of the person who is described as Witness 1 in the witness statement filed by the United Workers' Union in this proceeding (the **Confidential Information**) are to be kept confidential and no person shall publish or otherwise disclose the Confidential Information.
2. No person shall be permitted to access any document which contains the Confidential Information, or any document from which the Confidential Information may be discovered, on the file of the Fair Work Commission (**Commission**) in this proceeding.
3. Any part of the hearing of this proceeding in which Witness 1 is required to give evidence will be held in private, although a party to this proceeding will not be excluded from the hearing.
4. Any transcript of this proceeding must not be published to the extent that it records the Confidential Information.
5. Any decision of the Commission in this proceeding will not record the Confidential Information.

2.2 Please set out grounds for the order or relief sought.



Using numbered paragraphs, set out the grounds, including particulars, on which you are seeking the relief set out in question 2.1.

1. An application (*AM2020/104*) was made by the Australian Workers' Union to vary clause 15.2 Pieceworker Rates in the *Horticulture Award 2020* under section 158 of the *Fair Work Act 2009* (**the Proceeding**).
2. The United Workers' Union is filing submissions and witness evidence in support of the Proceeding.
3. The The United Workers' Union seeks confidentiality orders in relation to one of the witnesses (**Witness 1**) pursuant to s.593 and s.594 of the *Fair Work Act 2009* (**the Act**).
4. The proposed orders relate to the suppression of the name and address of Witness 1 from all persons and parties.
5. There are two grounds for the orders sought:
 - a. Witness 1 is a Protection Visa Applicant and is entitled to non-disclosure of their personal details. They are a vulnerable person and disclosure of their identity creates a risk of reprisal and reveals their location. S.91X of the *Migration Act 1958* (Cth) creates a presumption of non-publication in protection related proceedings in all Courts of Federal jurisdiction. Although this is not a protection related proceeding, the United Workers' Union submits that the same reasoning applies to facilitate the administration of justice, that is, that the witness be entitled to anonymity so as ensure that their identity and location is not disclosed in Australia and their home country, thereby mitigating the risk of any reprisal.
 - b. Witness 1 works in the horticulture industry in a rural small community and holds genuine fears not being able to secure further employment in that community if their identity and address is revealed to any extent.

3. The employer

3.1 What is the industry of the employer?

Horticulture

4. Industrial instrument(s)

4.1 Please set out any modern award, agreement or other industrial instrument relevant to the application and their ID/Code number(s) if known.

Horticulture Award 2020

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Jannette Armstrong, Director of Farms, United Workers Union
Date	19 March 2021



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS