



DECISION

Fair Work Act 2009

s.160 - Application to vary a modern award to remove ambiguity or uncertainty or correct error

Australian Municipal, Administrative, Clerical and Services Union
(AM2010/123)

CLERKS—PRIVATE SECTOR AWARD 2010

VICE PRESIDENT WATSON

SYDNEY, 17 SEPTEMBER 2010

Application to vary clause 25.1(b) - Weekly hours of work-day workers - clause arose from contract call centre industry - failure to delete clause was an error - clause deleted to correct error - Fair Work Act 2009, s160.

[1] This decision concerns an application by the Australian Municipal, Administrative, Clerical and Services Union (ASU) pursuant to s 160 of the *Fair Work Act 2009* (the Act) to vary the *Clerks—Private Sector Award 2010*¹ (the Clerks Award). The ASU seek the deletion of the sentence “Employees engaged in a call centre can be rostered to work ordinary hours from midnight Friday to midnight Saturday” from clause 25.1(b) of the Clerks Award.

[2] The history of the development of the Clerks Award is of considerable significance to this matter. During the award modernisation process provisions relating to call centres were initially reflected in a *Contract Call Centre Award 2010*² and other awards that applied to in-house call centres, including the Clerks Award.

[3] In August 2009 the Minister issued an amendment to the Ministerial Request requiring the Australian Industrial Relations Commission to reconsider the hours of work and penalty rates arrangements and to provide those arrangements substantially based on those then applying to employees within the industry in which they work.³

[4] The Award Modernisation Full Bench subsequently granted an application by the ASU to make two variations to the Clerks Award arising from the variation in the Ministerial Request.⁴

[5] I consider that the sentence subject to this application is of a similar character to the other provisions deleted from this award by the Award Modernisation Full Bench. The provision arises from the contract call centre industry, not general clerical awards. To fully

give effect to the variation in the Ministerial Request this provision should also have been deleted from the Clerks Award.

[6] I therefore consider that the continued existence of this sentence can be described as an error and that it is appropriate to correct that error by making a determination under s 160 of the Act to delete the sentence. I will issue a determination in accordance with this decision.

VICE PRESIDENT WATSON

Appearances:

J Nucifora for the Australian Municipal, Administrative, Clerical and Services Union

A Shepherd with *R Murphy* for Australian Industry Group

Hearing details:

2010.

Melbourne.

7 September

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¹ MA000002

² MA000023

³ Amendment to Award Modernisation Request made by the Minister for Employment and Workplace Relations, 26 August 2009

⁴ [2009] AIRCFB 982