



# DECISION

*Fair Work Act 2009*

s.160—Variation of modern award

## **Ikon Services Australia Pty Ltd; ISS Facility Services Australia Limited** (AM2010/218)

Cleaning services

DEPUTY PRESIDENT IVES

MELBOURNE, 6 OCTOBER 2010

### **Introduction**

[1] This decision relates to an application made on 16 September 2010 by Ikon Services Australia Pty Ltd (Ikon) and ISS Facility Services Australia Limited (ISS) to vary provisions of the *Cleaning Services Award 2010* (the Award) pursuant to s.160(1) of the *Fair Work Act 2009*.

[2] The application was listed for Mention and possible Directions on 5 October 2010.

[3] The application was supported, or not opposed, by all parties appearing. During the course of the Mention proceeding I decided that issuing directions for the filing and serving of submissions was unnecessary and that I was in a position to determine the matter on the basis of the materials already before me.

[4] The application seeks variations to remove ambiguity or uncertainty arising from various provisions pertaining to meal breaks, in particular, those at clause 24 and clause 26 of the Award.

[5] The variation further seeks to insert a new clause 24.3 that resolves any issues of uncertainty with regard to paid or unpaid meal breaks for full-time, part-time and casual employees.

### **Submissions**

[6] In its grounds submitted in support of its application the Applicant states:

*‘4.1 The current provisions is ambiguous to the extent that although the 20 minute break is paid for shift workers is paid, [sic] the operation of clauses 24.1 with respect to full time employees and 24.2 with respect to part time employee clearly provides that the time taken on breaks (whether paid or unpaid) are not counted as time worked.*

4.2 *The amendment to clause 24.1 and clause 24.2 to provide that unpaid breaks are not counted as time worked will partially resolve the ambiguity which has arisen.*

4.3 *The amendment to clause 26.1 to provide that paid breaks shall be counted as a time worked completely resolves the ambiguity and ensures that the provision will be clearly understood.*

4.4 *The amendment to clause 26.1 also seeks to resolve an error with respect to the internal cross referencing of the shift penalties provision by making reference to the correct clause number.*

4.5 *The amendment to clause 26.1 also resolves the ambiguity or uncertainty regarding the period of time to be worked by a shift worker before the entitlement to the paid meal break arises.'*

[7] A draft determination was provided by the Applicant as a mechanism for giving effect to the variations sought. The draft is reproduced below:

*'A. Further to the application by Ikon Services Australia Pty Ltd & ISS Facility Services Australia Limited the Cleaning Services Award 2010 will be amended as follows:*

*1 By amending clause 24.1(a) as follows:*

*"24.1 (a) Subject to clause 24.3, the ordinary working hours for full-time employees (as defined in clause 12.3) will not exceed 38 hours per week to be worked in periods of not more than 7.6 hours per day, in not more than five days, on any day Monday to Sunday inclusive."*

*2 By amending clause 24.2 Part time and casual employees, as follows:*

*"24.2 (a) Subject to the clause 24.3, the ordinary hours of work will be worked in periods of not more than 7.6 hours per day, on not more than five days, Monday to Sunday inclusive."*

*3 By renumbering existing clauses 24.3 and 24.4 to clauses 24.4 and 24.5 respectively.*

*4 By inserting a new clause 24.3:-*

***"24.3 Effect of breaks on ordinary hours of work***

*24.3(a) The paid meal break provided for in clause 26.1, is included in the 7.6 hours per day for full-time employees and also counts as time worked for part-time and casual employees.*

*24.3(b) The unpaid meal break provided in clause 26.2, is not included in the 7.6 hours per day for full-time employees and does not count as time worked for part-time and casual employees.*

*24.3(c) The paid tea breaks in clauses 26.1 and 26.2, are included in the 7.6 hours per day for full-time employees, and also count as time worked for part-time and casual employees.”*

5 *By amending clause 26.1 as follows:*

**“26.1 Shiftworkers**

*Shift workers (being employees who work a shift that attracts a shift penalty in clause 27) are entitled to a paid meal break of not less than 20 minutes. This break shall be given and taken not earlier than four hours, nor later than five hours, after the start of the employee’s shift. Full time shift workers working a straight shift are entitled to a further 10 minute paid tea break.”*

6 *By amending clause 26.2 as follows:*

**“26.2 Non - shiftworkers**

*Non – shiftworkers are entitled to an unpaid meal break of not less than 30 minutes, and not more than one hour. An employee will not be required to work for more than four and one half hours without a meal break, except in cases of emergency, when the time may be extended to five hours. All day workers and broken shiftworkers are entitled to a 10 minute paid morning tea break and a 10 minute paid afternoon tea break.*

*B. This determination will come into force on the first full pay period commencing on or after X October 2010.’*

**Consideration**

**[8]** I have considered the Application and I am satisfied on the basis of the materials before me that the Award does contain ambiguity and uncertainty in the relevant clauses 24 and 26 regarding meal breaks.

**[9]** Further I am satisfied that the draft determination provided, if adopted, will resolve the ambiguity or uncertainty found to exist.

**[10]** A determination in substantially the same terms as the draft determination (above) provided by the Applicant will issue as PR502506.

DEPUTY PRESIDENT

*Hearing details:*

2010.

Melbourne:

October 5.

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