



DECISION

Fair Work Act 2009

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

Hair & Beauty Industry & Employers Association of SA Inc (AM2010/233)

SENIOR DEPUTY PRESIDENT
HAMBERGER

SYDNEY, 19 JANUARY 2011

Application to vary a modern award; correction of error; school based apprentices.

[1] On 12 October 2010 the Hair and Beauty Industry & Employers Association of South Australia Incorporated applied pursuant to s.160 of the *Fair Work Act 2009* to vary the Hair and Beauty Industry Award 2010 ('the modern award') to insert provisions allowing for school based apprentices. The matter was dealt with together with other proposed variations; however this decision is concerned solely with this specific proposed variation.

[2] Written submissions were made in support of the inclusion in the modern award of provisions for school based apprenticeships by Australian Business Industrial (ABI), Business SA and the ACT & Region Chamber of Commerce & Industry. A hearing was conducted on 10 January 2011 at which both the Shop Distributive and Allied Employees Association (SDA) and the Australian Workers' Union (AWU) indicated their support for the proposed variation.

[3] The model school-based apprentices schedule was created the Full Bench of the Australian Industrial Relations Commission on 3 April 2009 in decision [2009] AIRCFB 345. In that decision the Full Bench indicated that *'The schedule should be included in every award in which an apprenticeship is possible.'*

[4] The modern award was dealt with as a 'priority award' during the award modernisation process and was finalised prior to AIRCFB 345. The Full Bench made a statement about 'residual variations' on 21 December 2009 indicating that *'the priority awards will be varied to include the ... model school-based apprentices provisions decided upon after the priority modern awards were made.'* ([2009] AIRCFB 980)

[5] However, when the draft residual variation for the modern award was issued on 18 January 2010 the school-based apprentices schedule was not included. This was not detected by either the industrial parties or the tribunal. As a result, when the Full Bench issued its final order for residual variations for the modern award on 16 March 2010, the order did not vary the award to include the school-based apprentices schedule.

[6] I am satisfied that the failure to include this schedule in the modern award was a simple error. I will vary the modern award to correct the error by inserting the model schedule, together with a clause in the modern award referring to the schedule. Consistent with s.165 (2) the variation will be given a date of effect of 1 January 2010.

SENIOR DEPUTY PRESIDENT

Appearances:

Ms S Morton for Hair and Beauty Industry and Employers Association of SA Inc

Mr B Briggs for Australian Business Industrial

Ms T Cruickshank and *Mr H Wallgren* for Business SA

Mr B Cagney and *Mr D Blairs* for the Shop Distributive and Allied Employees Association

Hearing details:

Sydney, Adelaide (by video)

2010

9 November

2011

11 January

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