



DECISION

Fair Work Act 2009

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

Construction, Forestry, Mining and Energy Union

(AM2011/41)

MANUFACTURING AND ASSOCIATED INDUSTRIES AND OCCUPATIONS AWARD 2010

[MA000010]

SENIOR DEPUTY PRESIDENT ACTON

MELBOURNE, 13 OCTOBER 2011

Application to vary a modern award.

[1] This matter concerns an application by the Construction, Forestry, Mining and Energy Union (CFMEU) to vary the *Manufacturing and Associated Industries and Occupations Award 2010*¹ (Manufacturing Award) to add a new clause “4.10(nn) refractory materials” to the coverage clause of the Manufacturing Award. In support of the variation, the CFMEU said:

“...the coverage of the refractory materials other than those based in clay is unclear. These materials include oxides of aluminium, silicon, magnesium and calcium, and zirconia, silicon carbide and carbon (graphite). Other materials include high temperature concretes.”

[2] The application is made pursuant to s.160 of the *Fair Work Act 2009* (Cth) (FW Act) to remove uncertainty or ambiguity.

[3] In submissions in respect of the application, the Australian Industry Group (AIG) and the “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) essentially indicated that they were not satisfied the variation is necessary. Master Builders Australia (MBA) maintained that, while the Manufacturing Award clearly covers the production of “refractory bricks” made from clay, there is the possibility that the coverage of refractory materials made from other substances is unclear and further evidence of the extent of the lack of clarity should be provided to Fair Work Australia (FWA). They submitted the onus lay with the CFMEU to demonstrate the ambiguity or uncertainty. The MBA also submitted that if the Manufacturing Award is varied as sought by the CFMEU, then the term “refractory materials” should also be defined.

[4] I am satisfied the Manufacturing Award should be varied to include a new clause “4.10(nn) refractory materials”.

[5] I am so satisfied because clauses 4.10(a) and (o) of the Manufacturing Award are as follows:

“4.10 For the purposes of clause 4.9(a)(i), the products, structures, articles, parts, components, materials and substances include:

- (a) all products made from, or containing, steel, iron, metal, sheet metal, tin, brass, copper and non-ferrous metal....
- (o) clay and ceramic articles, including but not limited to bricks, refractory bricks, terra cotta products, tiles, pipes, pottery, tableware and flower pots.”

[6] These clauses are intended to cover refractory materials beyond refractory bricks. The variation will remove the ambiguity or uncertainty about that coverage.

[7] I am not persuaded, however, that a definition of “refractory materials” is needed in the Manufacturing Award.

[8] In its submissions the AIG also suggested changes to clauses 4.10(ee) and (ff) of the Manufacturing Award. I am not persuaded this application is an appropriate vehicle for considering those proposed changes.

[9] A determination reflecting the variation that I am satisfied should be made to the Manufacturing Award is being issued at the same time as this decision.²

SENIOR DEPUTY PRESIDENT

Appearances:

S. Maxwell, for the Construction, Forestry, Mining and Energy Union.

C. Estoesta, for the “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU).

R. Calver, for Master Builders Australia.

S. Smith, for the Australian Industry Group.

Hearing details:

2011.

Melbourne:

October, 12.

Endnotes:

¹ MA00010.

² PR515682.

Printed by authority of the Commonwealth Government Printer

<Price code A, MA000010 PR515668>