



DECISION

Fair Work Act 2009

s.158 - Application to vary or revoke a modern award

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

Mr John Broomhead

(AM2013/5)

Construction, Forestry, Mining and Energy Union

(AM2013/18)

Building, metal and civil construction industries

SENIOR DEPUTY PRESIDENT WATSON

MELBOURNE, 26 SEPTEMBER 2013

Applications to vary the Building and Construction General On-site Award 2010
[MA000020].

[1] The following decision was announced in transcript on 23 September 2013 (now edited).

[2] In a Statement and Directions of 29 August 2013 in relation to the applications in AM2013/5 and AM2013/18, I set out a number of matters on which further written submissions were sought and determination was required.

[3] Having regard to the further written submissions filed and oral submissions today, I have reached the following decision.

[4] In relation to AM 2013/5, I am not satisfied that Mr Broomhead has established that he has the standing to bring his application in AM2013/5 as employee or organisation that is covered by the modern award (s.158(1)). Notwithstanding several opportunities to do so, whilst providing evidence that he has worked as a traffic controller, Mr Broomhead has not brought evidence to establish that he is an employee covered by the *Building and Construction General On-site Award 2010* [MA000020] (On-Site Award) in undertaking that work.

[5] I have decided not to further consider the application in AM2013/5 to vary the On-Site Award on my own motion for several reasons:

- First, most of the issues raised in the application by Mr Broomhead fall within the scope of the issues raised by the Construction, Forestry, Mining and Energy Union (CFMEU) application in AM2013/18 and are amenable to submissions in that context;
- Second, to the extent that they do not - most notably in relation to the variation proposed to insert, in effect, a 4 level classification structure for traffic controllers, ranging from the current ECW2 classification through to a level equivalent to level ECW8 - the Advanced Engineering Construction tradesperson, requiring a trade qualification plus 12 appropriate modules of additional qualifications (or equivalent skills gained through work experience subject to competency testing to the prescribed standards), I am not satisfied that the application has sufficient prospect of success to warrant proceeding to hear the application on the basis that I might ultimately be persuaded to vary the award on my own motion. The elements of Mr Broomhead's application to vary which are not broadly encompassed with the CFMEU application in AM2013/18 would place a very considerable burden on Mr Broomhead to substantiate (which burden is not met by his current submissions) and all other interested parties to respond to, which is not warranted in light of the limited prospect of a variation under s.157 or 160 of the Act.

[6] I find that Mr Broomhead has not established the requisite standing to bring his application in AM2013/3. I will not proceed to hear and determine the application on the basis that those elements which do not fall within the scope of the CFMEU application in AM 2013/18 might satisfy me to vary the Award on my own motion in relation to those matters. On the material before me there is no basis to think that there is any reasonable prospect of such satisfaction. The application in AM2013/5 is dismissed for want of standing by the applicant, Mr Broomhead.

[7] The CFMEU application in AM2013/18 will be listed for conference at 9.30 am on Monday 21 October, 2013, in Sydney, with video access to other locations, subject to a request for a link to a particular location by Monday 14 October 2013

SENIOR DEPUTY PRESIDENT

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