



DIRECTIONS

Fair Work Act 2009

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

Application by Alexander Smith

(AM2024/7)

RAIL INDUSTRY AWARD 2020

Rail industry

VICE PRESIDENT ASBURY

BRISBANE, 8 APRIL 2024

Application to vary, revoke or make a modern award – Rail Industry Award 2020.

BACKGROUND

[1] Mr Alexander Smith (Applicant) applies to the Fair Work Commission (Commission) under s. 158 of the *Fair Work Act 2009* (the Act) to vary the Rail Industry Award 2020 (Award) to cover the role of Protection Officers in the rail industry.

[2] In response to the Directions issued on 28 February 2024, the Applicant filed material and a draft determination on 12 March 2024 in support of his application.

[3] A case management hearing was conducted on 5 April 2024. The Australian Industry Group (AiG) has sought to be a party to the proceeding on the basis that it opposes the variations sought by the Applicant.

[4] The Rail, Tram and Bus Union (RTBU) and the Australian Services Union (ASU) have sought additional time to consider their positions in relation to the implications of the variations for their members and their future involvement in the proceeding.

[5] Further to a case management hearing conducted on 5 April 2024, the following Directions are issued.

DIRECTIONS

Permission for legal representation

1. Any party seeking to be represented by a lawyer or paid agent is to file in the Commission and serve on the other party an outline of submissions, addressing the matters in s. 596 of the Act, in relation to permission, by no later than **4.00 PM AEST on Friday, 3 May 2024.**

2. Any submissions in opposition to the grant of permission for a party to be represented by a lawyer or paid agent are to be filed in the Commission and served on the other party, by no later than **4:00 PM AEST on Friday, 17 May 2024**.

Interested parties

3. By no later than **4:00PM AEST Friday on 19 April 2024**, the RTBU is to advise the Commission in writing its position with respect to the application in AM2024/7, including whether it supports, opposes or seeks to advance an alternative position to, the variations sought by the Applicant.
4. By no later than **4:00PM AEST Friday on 19 April 2024**, the ASU is to advise the Commission in writing its position with respect to the application in AM2024/7, including whether it supports, opposes or seeks to advance an alternative position to, the variations sought by the Applicant.
5. By no later than **4:00PM AEST Friday on 31 May 2024**, the AiG is to file in the Commission and serve on the other party an outline of submissions and a witness statement of any witness it intends to rely on at Hearing, in response to the material and draft determination filed by the Applicant.

Applicant's material in reply

6. By no later than **4:00PM AEST Friday on 14 June 2024**, the Applicant is to file in the Commission and serve on the other party, any material in reply to the material filed by the other interested parties in accordance with these Directions.

Witness Statements

7. Witness statements are required to be provided for each witness that the parties intend to call to give evidence at the hearing.
8. Witness Statements are designed to take the place of evidence-in-chief. Leave of the Commission may be required if evidence in addition to that set out in a witness statement, is sought to be advanced at the hearing.

Cross-examination and hearing

9. The matter will be listed for a case management, following receipt of all material, to program a Hearing.
10. The parties will be required to confirm which witnesses are **not** required for cross-examination 5 business days before the date of the Hearing. In the absence of confirmation that a witness is not required for cross-examination, the parties are to proceed on the basis that the witnesses are required for cross-examination and that witnesses must attend the hearing. Witnesses are required to attend the hearing in person unless prior permission has been granted for a witness to appear by other means, or it has been confirmed that the witness is not required for cross-examination.
11. If a witness for whom a statement has been provided is not required for cross-examination, the statement of that witness may be admitted into evidence at the hearing.

12. If a witness who is required for cross-examination does not attend the hearing, then the statement of that witness may not be admitted into evidence.

Form and method of serving material

13. Each party is required to serve one (1) copy of their Submissions and Witness Statements on the other party by the required date. Service can be effected by registered post, facsimile or email.
14. Each party is required to file copies of their Submissions and Witness Statements in the Commission by filing one (1) electronic copy of their Submissions and Witness Statements, in Microsoft Word and/or PDF format, by email to the Chambers of Vice President Asbury at chambers.asbury.vp@fwc.gov.au.

Non-compliance with these Directions

15. The Commission may refuse to accept material that is filed after the expiry of a timeframe unless an extension has been sought and granted by the Commission prior to the expiry of that timeframe.
16. Requests for an extension of time must be made to the Commission in writing in a timely manner and specify grounds upon which the extension is sought. Relevant documents such as medical certificates should also be provided. Parties must not assume an extension will be granted.

Requirements for the hearing

17. If a party intends to hand up a document at the hearing, the party will need to have one copy of the document for the Vice President and additional copies for other parties.
18. If a party wishes to bring the statement of a witness to the attention of another witness and to show the statement to a witness, the party will also need to bring an extra copy of the witness statement for the other witness.
19. If a party refers to a legal authority, the party will need one copy for the Vice President and additional copies for the other parties.

Enquiries

20. Please direct all enquiries to the Associates to Vice President Asbury on (07) 3028 7812 or chambers.asbury.vp@fwc.gov.au.



VICE PRESIDENT

Printed by authority of the Commonwealth Government Printer