

From: Luis Izzo [mailto:Luis.Izzo@ablawyers.com.au]
Sent: Monday, 2 November 2015 3:39 PM
To: AMOD
Cc: 'djmacken@macken.com.au'; Chambers - Ross J
Subject: 2014/305 - 4 Yearly Review of Modern Awards - Penalty Rates Case

Dear Sir/Madam

Attached is a Further Supplementary Statement of Ms Emily Baxter that the NSWBC and ABI seek leave to file in the above proceedings.

Our office has been in contact with the representatives for the SDA and confirms that the SDA do not oppose the filing of the Statement. As the Statement only pertains to the retail industry, we have not sought the consent of the other union parties in relation to the filing of the Statement.

If leave is granted for the filing of the Statement (and the further documentation foreshadowed by Ms Baxter in the Statement), it is possible that the SDA may wish to have Ms Baxter recalled for further cross-examination.

We intend to draw this matter to the attention of the Full Bench during the hearings scheduled for 4-6 November 2015.

Should you have any queries, please do not hesitate to contact me.

Yours faithfully

Luis Izzo

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FAIR WORK COMMISSION
4 Yearly Review of Modern Awards
Common Issue: Penalty Rates

Applicant: Australian Business Industrial and NSW Business Chamber Ltd
Matter: AM2014/305

FURTHER SUPPLEMENTARY STATEMENT OF EMILY BAXTER

I, Emily Baxter, of 140 Arthur Street, North Sydney in the state of New South Wales, state as follows:

BACKGROUND

1. I am employed by Australian Business Lawyers and Advisors ('**ABLA**') in the position of Lawyer.
2. I have been employed in that role since approximately August 2013.
3. I have previously made a statement in these proceedings dated 10 August 2015 ('**My Original Witness Statement**') as well as a supplementary statement dated 9 October 2015 ('**My Supplementary Witness Statement**').

THE SURVEY

4. In July 2015, ABLA developed a survey, the purpose of which was to collect evidence from employers in the retail industry in relation to the trading and rostering practices of businesses ('**Survey**'). A copy of the Survey has previously been filed together with My Original Witness Statement.
5. During the hearing on 20 October 2015, I gave evidence before the Fair Work Commission in relation to My Original Witness Statement and My Supplementary Witness Statement.
6. Following the hearing, I had a conversation with Mr Izzo of Australian Business Lawyers & Advisors. During that conversation, Mr Izzo said words to the following effect:

"Can you please have a look at Survey Monkey in relation to the survey questions about Enterprise Agreements and Modern Award coverage?"
7. On 21 October 2015, I logged in to Survey Monkey to review the questions that related to Enterprise Agreements and Modern Award coverage. Survey Monkey is the software system that ABLA used to conduct the survey.
8. I looked at both the Survey Monkey software as well as looking at the Survey as a respondent could have completed it by following the link set out in the email that is contained behind Tab 1 of Exhibit EB1 to My Original Witness Statement.

Lodged by:	Australian Business Industrial NSW Business Chamber Ltd	Telephone: (02) 9458 7640
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9. Upon review of the questions that related to Enterprise Agreements and Modern Award coverage in Survey Monkey, I discovered that some of the answers that I gave to questions during the course of giving evidence on 20 October 2015 were not correct.
10. This view was confirmed when I reviewed a copy of the transcript of proceedings of 20 October 2015 (**20 October Transcript**), which was provided to me by email by Ms Miriam Henry on behalf of the Fair Work Commission on 22 October 2015.

QUESTION 5 OF THE SURVEY

11. During the course of giving evidence, I was cross-examined by the representative of the Shop Distributive and Allied Employees' Association (SDA), Mr Moore.
12. During the course of being cross-examined by Mr Moore, Mr Moore asked me a series of questions relating to question 5 of the Survey.
13. Question 5 of the Survey asks respondents:

Do you have an enterprise agreement that applies to your business?

Respondents could answer either "Yes" or "No" by selecting the appropriate check box.

14. During the course of the cross-examination, the following exchange took place between Mr Moore and me:

If you go back to question 5, which was a question, "Do you have an enterprise agreement that applies to your business"?---Yes.

675 people answered this question and 17.63 per cent of them said they did have an enterprise agreement?---Yes.

Is the Commission's - there is no indication that those persons, those 119 persons, were then directed out of the survey?---That would be the same as before, yes.

Pardon?---The same as before, yes.

So the same analysis would apply in relation to those who said that they were covered by another award other than the GRIA?---That's right.

Yes. Those persons could have kept participating in the survey?---Potentially, yes.

This dialogue is located at PN17476 to PN17481 of the 20 October Transcript.

15. The responses I gave to the questioning about question 5 indicated that respondents who responded "Yes" to question 5 then completed the rest of the Survey.
16. Having reviewed the Survey in Survey Monkey, I now know this to be incorrect.
17. When a respondent was completing the Survey, question 5 and question 6 were displayed on the same page. To move to question 7, the respondent needed to click on the "Next" button.
18. The "Logic" that was attached to question 5 in the software of Survey Monkey indicates that if a respondent selected the check box "Yes", Survey Monkey would not allow the respondent to move beyond the current page of the Survey to question 7.

19. When the respondent clicked the "Next" button, Survey Monkey was programmed to instead automatically take the respondent to the end of the Survey. This meant that the respondent could not then continue to answer the remaining questions of the Survey.
20. Annexed and marked "A" is a screenshot I took from the software of Survey Monkey which shows the "Logic" attached to question 5 of the Survey as described above.

QUESTION 6 OF THE SURVEY

21. During the course of being cross-examined by Mr Moore, Mr Moore asked me a series of questions relating to question 6 of the Survey.

22. Question 6 of the Survey asks respondents:

Does a Modern Award apply to your business?

Respondents could answer either:

- (a) "Yes, the General Retail Industry Award 2010";
- (b) "Yes, an award other than the General Retail Industry Award 2010";
- (c) "No"; or
- (d) "I don't know"

by selecting the appropriate check box.

23. During the course of the cross-examination, the following exchange took place between Mr Moore and me:

All right. So with - while we have question 6 in front of us, 9.81 per cent of people who responded to this question said, "Yes, an award other than the General Retail Industry Award 2010." I'm right so far?---Yes.

Now, those - that 9.81 per cent of respondents were not then diverted out of the survey or were they - I assume they were able to complete the remaining questions?---I'm not sure of the answer to that.

Well, there's nothing in the material that you've put before the Commission that suggests that if you answered, "Yes, an award other than the award," there was a prompt for that person to then leave the survey?---That's correct.

So the Commission is entitled to proceed on the basis then that the survey - those who responded to the survey included 9.81 per cent who understood that they were actually under a different award other than the GRIA?---That could be the case.

This dialogue is located at PN17468 to PN17471 of the 20 October Transcript.

24. My response to the questions asked by Mr Moore in relation to question 6 of the Survey were correct - a respondent who answered "Yes, an award other than the General Retail Industry Award 2010" could continue to answer the remaining questions of the Survey.
25. Mr Moore did not ask me whether the respondents who answered "No" to question 6 of the Survey could continue to answer the remaining questions of the Survey.

26. However, for the sake of completeness, when I conducted my review of question 6 in the Software of Survey Monkey, I also checked what happened to respondents who answered "No" to this question.
27. Once a respondent answered question 6 of the Survey and in order to move to question 7 of the Survey, a respondent would need to click the "Next" button as described earlier above.
28. The "Logic" that was attached to question 6 in the software of Survey Monkey indicates that if a respondent selected the check box "No", Survey Monkey would automatically take the respondent to the end of the Survey once they clicked the "Next" button. This meant that the respondent could not then continue to answer the remaining questions of the Survey.
29. Annexed and marked "B" is a screenshot I took from the software of Survey Monkey which shows the "Logic" of question 6 of the Survey as described above.

ADDRESSING NON-RETAIL RESULTS

30. In order to address the fact that the current survey results contained within My Original Witness Statement and Supplementary Witness Statement incorporate responses from some employers covered by an award other than the General Retail Industry Award 2010, I intend to file a statement with revised survey results containing responses only from those respondents covered by the General Retail Industry Award 2010. This further Statement will be filed during the week beginning 2 November 2015.


Emily Baxter

2 November 2015
Date

“A”

SurveyMonkey Design: F x

https://www.surveymonkey.net/create/?sm=6Ncrehmnc5M9pQkgQpoALecWEWbVwnDY0MTY0gyUZFc_3D

RETAIL INDUSTRY ANONYMOUS ...

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PAGE 2 Page Logic More Actions P2: RATES OF P...

RETAIL INDUSTRY ANONYMOUS SURVEY

RATES OF PAY FOR STAFF

Edt Options Logic Move Copy

RESPONSES COLLECTED: Changes to this question will be limited.

If answer is ...	Then skip to ...	Clear All
Yes	End of survey	Clear
No	-- Choose Page --	Clear

Save Cancel

6. Does a Modern Award apply to your business?

- Yes, the General Retail Industry Award 2010
- Yes, an award other than the General Retail Industry Award 2010
- No

Feedback

https://www.surveymonkey.net/create/?sm=6Ncrehmnc5M9pQkgQpoALecWEWbVwnDY0MTY0gyUZFc_3D#don't-know

9:41 AM 21/10/2015

"B"

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RETAIL INDUSTRY ANONYMOUS ... Upgrade Preview & Test Print Next →

5. Do you have an enterprise agreement that applies to your business?

Yes
 No

Builder menu:
Multiple Choice
Dropdown
Matrix / Rating Scale
Matrix of Dropdown Menus
Ranking
Net Promoter® Score
Single Textbox
Multiple Textboxes
Comment Box
Contact Information
Date / Time
Text
Image
Text A/B Test Upgrade
Image A/B Test Upgrade
Intro Page
New Page
QUESTION BANK
LOGIC
OPTIONS
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Logic Editor:
RESPONSES COLLECTED: Changes to this question will be limited.
If answer is ... Then skip to ... Clear All
Yes, the General Retail Industry Award 2010 -- Choose Page -- Clear
Yes, an award other than the General Retail Industry Award 2010 -- Choose Page -- Clear
No End of survey Clear
I don't know -- Choose Page -- Clear
Save Cancel

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