



16 August 2016

**Associate to Vice President Hatcher
Fair Work Australia
Terrace Tower
80 William Street
EAST SYDNEY NSW 2011**

**BY EMAIL: chambers.hatcher.vp@fwc.gov.au
amod@fwc.gov.au**

Dear Associate,

Re: AM2014/196 & AM2014/197: Casual Employment and Part Time Employment - Objections to Witness Statement of Ms Evans filed by the Recruitment and Consulting Services Association (RSCA)

We write further to our email to the office of Vice President Hatcher on 5 August in which we objected to the admission of Ms Evans's statement, filed by the RSCA on 29 July, in regards to the above matter. In that email we outlined that the basis of our objection is that the material goes beyond the matters it states to address and/or addresses matters not in contention. Further, we maintain that the tardy filing of the statement has disadvantaged our ability to respond to the material in our Final Submission, which the Vehicle Division filed by the Commission's deadline on the 10 June.

It has since come to our attention that the RSCA has sought to rely on the material in Ms Evans's statement at paragraphs [48] - [49] of their Final Submission, filed on the 11 August. We wish to re-iterate our objection to the admission of Ms Evans's statement and further object to any reliance upon material adduced from the statement in the submissions made by RSCA, on the basis that the material is not formally before the parties or the Commission.

In the event that Ms Evans's statement is admitted, the AMWU-VD lodges the attached Submissions regarding the weight and treatment of the statement in the current proceedings.

Sincerely,

**Lena Lettau
National Industrial Officer
AMWU – Vehicle Division**

Australian Manufacturing
Workers' Union
Registered as AFMEPKIU
National Office
Vehicle Division
2nd Floor,
251, Queensberry Street
Carlton South VIC 3053
Telephone 03 9230 5888
Facsimile 03 9230 5896

IN THE FAIR WORK COMMISSION

Matter No: Section 156 of the *Fair Work Act 2009* (Cth)
4 Yearly Review of Modern Awards

AM2014/196 & AM2014/197 - Casual and Part Time Employment

Applicant: Automotive, Food, Metals, Engineering, Printing and Kindred Industries
Union” known as the Australian Manufacturing Workers’ Union (AMWU)
– Vehicle Division

**SUBMISSIONS OF AUSTRALIAN MANUFACTURING WORKERS UNION – VEHICLE
DIVISION**

RE: RESPONSE TO STATEMENT OF MELISSA EVANS, DATED 28 JULY 2016

16 AUGUST 2016

Lodged by the Applicant

Address for service

Attention: National Office – Vehicle Division
Australian Manufacturing Workers’ Union
2/251 Queensberry St
Carlton South VIC 305

Phone: (03) 9230 5705
Email: Lena.Lettau@amwu.asn.au

Introduction

1. The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union - Vehicle Division (“AMWU – VD”) has previously made an application to vary the *Vehicle Manufacturing, Repair, Service and Retail Award 2010* MA00089 (“VMRSR Award”) in matters AM2014/196 & AM2014/197 Casual and Part Time Employment.
2. In respect of this application, the AMWU-VD has filed Submissions on 2 November 2015, Reply Submissions on 25 February 2016, a Reply Statement (Clinton Lewin) on 9 March 2016 and Final Submissions on 10 June 2016.
3. On 29 July 2016 FCB Workplace Law filed a statement on behalf of their client, the Recruitment and Consulting Services Association (RCSA) in regards to this matter. The statement is that of Ms Melissa Evans, a staff member at Randstad Pty Ltd (Randstad), dated 28 July 2016.
4. The statement has been provided in rebuttal to evidence provided by Mr Clinton Lewin, a witness who has previously provided evidence in support of the AMWU-VD’s submissions. Mr Lewin’s evidence has consisted of two written statements, one dated 26 October 2016 and another dated 9 March 2016, as well as oral testimony on 16 March 2016.
5. We note that the AMWU has objected to the admission of Ms Evans’s statement on the grounds that the RSCA has had months to respond to Mr Lewin’s statement and that they have had full knowledge that we would object to any response from the 6 April, 2016.
6. However, given that the statement has been admitted, the Vehicle Division provides this submission in response to Ms Evan’s statement. We submit that on the whole the statement addresses matters not in contention and not arising from Mr. Lewin’s oral or written testimony. This submission will, however, address the two following more pertinent matters raised in Ms Evans’s statement:
 - a. The claim by Ms Evans’s that she has no personal recollection nor has Randstad any record of requests for permanency made by Ms Hunter;¹ and
 - b. The claim by Ms Evan’s that at no time did Ms Hunter, or any representative on her behalf, allege that she was underpaid in her employment with Randstad.²

Requests for permanency

7. Ms Evans’s, at paragraph 16 states:

“Randstad has no record of any request by Ms Hunter to convert her employment from casual to permanent full-time or part-time, or a request made by any person

¹ Statement of Melissa Evans dated 28 July 2016 at [16]

² Ibid at [17]

on behalf of Ms Hunter. I do not recall Ms Hunter ever requested that Randstad make her a permanent employee. Given that I was the Branch Manager of the Wollongong branch, and Patrick Autocare was a major client, I would have been aware of any such requests.”

8. We submit that where this statement asserts that no request was made to convert Ms Hunter’s employment to permanency, it deals with a matter not in contention and not arising from Mr. Lewin’s oral or written testimony.
9. Mr Lewin has not asserted that Ms Hunter or anyone on her behalf made requests with Randstad (directly) for permanency of her employment.
10. Mr Lewin has only ever testified that requests for permanency were made by Ms Hunter and himself on behalf of Ms Hunter directly with Patrick Autocare’s management.^{3,4} Ms Evans’s assertion that she ‘would have been aware of any such request’⁵ is not proof enough that Mr Lewin’s claims in this regard were incorrect.
11. It is understandable that Randstad would have no record of these requests, because the requests were never made with Randstad directly.
12. Further, in respect of this claim, Mr Lewin also testified that he was aware of other requests for permanency that were allegedly made by other employees. These requests were also made directly with management at Patrick Autocare and not to Randstad.
13. The following extracts taken from Mr Lewin’s testimonies exemplify this point:
 - a. *“Before I approach these employers, I am approached by casual employees at general mass meetings who inform me through question time that they have tried to convert by asking their direct manager for permanent employment on numerous occasions which is declined”.*⁶
 - b. *“An example of where similar conduct (issues when requests for permanency were made) has happened more recently was at Patricks at the Kembla Grange site... Although I am aware that there is no obligation on Patricks as the host company to make labour hire casuals employees permanent, I have been told by Trish Hunter that where casual employees have directly asked the host Patricks to become permanent...”*⁷
14. Similar statements have been made in Mr Lewin’s testimony at:
 - a. 26 October statement at [10] and [13]

³ Transcript of Proceedings – AM2014/196 & AM2014/197 – Four Yearly Review of Modern Awards – Casual Employment and Part-time Employment dated 16 March 2016 at [PN3353]

⁴ Ibid at [PN3377]

⁵ Above n 2

⁶ Statement of Clinton Lewin 26 October (Exhibit 26) at [14]

⁷ Ibid at [11]

b. 16 March 2016 at [PN3367]

15. Mr Lewin, himself, has also testified that he personally raised issues regarding casual conversion with Patrick Autocare management on a number of occasions in regards to casual employees en masse.⁸ Again, these requests were not made directly to Randstad, as exemplified in the statement below:

a. “ (Bull DP) Did you take it up [requests for permanency] with the labour hire company [Randstad]? --- (Mr Lewin) No, I didn't.”⁹

16. We submit that this practice of labour hire employees seeking permanency with their host employer rather than the labour hire company they are employed by is common practice. The fact that all requests made by Ms Hunter, Mr Lewin and other employees of whom Mr Lewin was aware of were made directly with Patrick Autocare support this. This practice rests on the logic that where labour hire employees work on a regular and consistent basis with a sole employer they would more likely make such a request direct with the company, as their intention is to become direct employees of that company.

17. For these reasons we maintain that Mr Lewin's statements in regards to casual conversion requests were not made in error and that requests for permanency were made by and on behalf of Ms Hunter.

Underpayment claim

18. Ms Evans's asserts, at paragraph [17] of her statement, that:

a. “At no time did Ms Hunter, or any representative on her behalf, allege that she was underpaid in her employment with Randstad. Given that I was the Branch Manager of the Wollongong branch I would have been informed of any such underpayment claim”.

19. In response to this claim we submit that Mr Lewin did at no point in his testimony allege that an underpayment claim was made by Ms Hunter directly with Randstad by the AMWU.

20. Mr Lewin, where he refers to Ms Hunter being 'entitled to a very hefty underpayment claim'¹⁰, was referring to a dispute in regards to an underpayment of wages in accordance with clause 17.5(c) of the *Patrick Autocare (Vehicle Processing) Enterprise Agreement 2010* (The Patrick Agreement).

21. This dispute was raised on behalf of a number of members working at Patrick Autocare, including Ms Hunter.

22. This claim has since been settled, however as the details of the settlement are confidential we cannot disclose further materials. We are prepared, however, to

⁸ Above n 3 at [PN3424]

⁹ Ibid at [PN3380]

¹⁰ Ibid at [PN3352]

substantiate the existence of this dispute with further documentation should the Commission or Randstad require it.

23. Whilst we acknowledge that Randstad were not a party to this dispute or settlement, we submit that it would have been highly unlikely that Randstad would not have been on notice that the dispute had been lodged. Given that they were the labour hire company contracting employees directly involved in the dispute, it would be contrary to standard practice for them to have remained uninformed of the matter.

Conclusion

24. In summary, we submit the following:

- a. We are not in dispute about the fact that Ms Hunter did not make a request for permanency directly with Randstad;
- b. Both Ms Hunter and Mr Lewin on Ms Hunter's behalf did, however, make requests for permanency with management at Patrick Autocare. Requests for permanency by and on behalf of other employees were also made;
- c. Ms Hunter was involved in a claim for a breach of the Patrick Agreement in regards to an underpayment of wages.

END.