

From: Wayne Lee [mailto:wayne@austrainers.com.au]
Sent: Wednesday, 28 October 2015 11:00 AM
To: Chambers - Ross J; 'Jamila Gherjestani'; 'brent.ferguson@aigroup.asn.au'; 'Jessica.Light@afei.org.au'
Cc: Wayne Lee
Subject: Group 2 Awards - Horse & Greyhound Training Award 2010 MA2014/205

Dear Associates,

I refer to the conference at the Fair Work Commission on 27 October 2015 before Justice Ross.

During these proceedings the Australian Trainers' Association (ATA) was provided with an opportunity to respond to a number of issues with the revised Exposure Draft in relation to the Horse and Greyhound Training Award 2010.

A copy of the Fair Works Ombudsman's position, obtained by the ATA on Casual Employees and public holiday entitlements, accompanies this response.

I thank Justice Ross for this opportunity and have outlined the response below.

Exposed Draft Horse and Greyhound Training Award 2015. (21 October 2015)

ITEM 11 Clause 6.5 (e) (ii) Discussion took place regarding the casual loading wording that "The loading is paid instead of leave or public holiday benefits applying to full and part time employees". It was agreed by the parties present, that there was no need to include the clause, as the NES states, that Division 6 - Annual Leave does not apply to casual employees.

Therefore 6.5 (e) (ii) was deleted from the Casual Loading clause.

Clause 14.1 states that "Annual Leave is provided for in the NES. Annual Leave does not apply to casual employees." This reflects what is currently in the award, that leave entitlements do not apply to casuals.

Clause 17.1 states "Public holidays are provided for in the NES." Clause 17.1 does not state that this clause doesn't apply to casuals, which is a substantive change from the current award clause 10.4 (c).

Current award Clause 10.4 (c) states "A casual employee working ordinary time must be paid the appropriate minimum wage prescribed in clause 13- Classification and minimum wages, calculated hourly plus a loading of 25% but will not be entitled to any of the leave or public holiday benefits applying to full-time employees. The loading constitutes part of the casual employee's all-purpose rate."

The following words inserted in the annual leave clause 14.1 of the exposure draft, should also be inserted in the public holiday clause 17.1 of the exposure draft. This would provide consistency and not deviate from the current award.

Clause 17.1 Public holidays are provided for in the NES. Public holiday entitlements do not apply to casual employees.

Schedule A 2.2 and A 2.3

As a flow on to the above, Schedule A 2.2 and Schedule A 2.3 currently calculate an entitlement to casual employees for public holidays, which is not in the current award. The public holiday column in both Schedule A 2.2 & A 2.3 should be deleted.


Please find attached the Fair Work Ombudsman's position pertaining to clause 10.4 (c) Casual employment and public holiday entitlements.


Please do not hesitate to contact me should you have any queries.

Kind regards

Wayne Lee
Industrial Relations Manager

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Australian Government

Fair Work OMBUDSMAN

Reference Number: 4244736
15 August 2011

Mr Wayne Lee
wayne@austrainers.com.au

Dear Mr Lee,

I refer to your enquiry regarding the calculation of casual rates of pay for work performed on a Sunday under the Horse and Greyhound Training Award 2010 [MA000008] (the Training Award). Further to our telephone conversation on 27 June 2011, I provide the following information for your assistance, I apologise for the time taken to provide this written advice.

Clause 10.4(c) of the Training Award states that casual employees working ordinary hours are entitled to be paid at the appropriate minimum rate, plus an hourly loading of 25%. In addition, the clause provides that this loading constitutes the casual employee's 'all-purpose rate'. This compounds the penalty rate and the casual loading for all purposes of the award.

Accordingly, casual penalty rates for work performed on a Sunday are calculated as follows:


Example: Stablehand Grade 1

Ordinary hours –

$\$606.40 / 38 \text{ hours} = \15.96 per hour
 $+ 25\% \text{ casual loading} = \19.95 per hour

Work performed on a Sunday –

Sunday penalty rate 200% (cl.22.2)
 $\$19.95 * 200\% = \39.90 per hour

 You have also requested further information about casual employees and their entitlement to penalty rates for work performed on a public holiday under the Training Award. Clause 10.4(c) states that a casual employee 'will not be entitled to any of the leave or public holiday benefits that apply to full-time employees'. Accordingly, we are of the view that a casual employee working on a public holiday is excluded from the penalty rates provided at clause 26.3 of the Training Award. We note that this is consistent with the operation under the key pre-modern award in the industry, the Horse Training Industry Award 1999 [AP783476].

We trust this information has been of assistance. If you have any further queries or require clarification about the information provided, please contact me directly on (02) 9297 9016 or via email at alex.kym@fwo.gov.au

Yours sincerely

Alex Kym
Knowledge Services Team
Fair Work Ombudsman