

Section: s.156 - 4 yearly review of modern awards

Title of the matter: 4 yearly review of modern awards – *Horse and Greyhound Training Award 2010*

Matter number: AM2014/205

The Australian Workers' Union's outline of submissions

We refer to the Amended Directions of His Honour Justice Ross on 6 May 2015¹. In accordance with the Amended Direction the Australian Workers' Union (AWU) files its comprehensive written submissions on the technical and drafting issues related to the exposure draft of the *Horse and Greyhound Training Award 2010*. We also rely on our previous written submissions filed for this award.

We have not included submissions on drafting and technical issues dealt with in the Full Bench Decision of 23 December 2014² and 13 July 2015³ on the basis that the exposure draft would subsequently be amended so it is consistent with the Decisions.

1. Clause 6.2 Types of employment: The clause states,

“an employer will inform each employee of the terms of their engagement and their type of employment.”

2. An employer informs its employee of the terms of their employment and type of employment before the employee has commenced employment. However, clause 6.2 does not make this clear, therefore to specify when an employer has to inform each employee of the terms of their engagement and their type of employment we propose the following wording (underlined) to be inserted at the beginning of clause 6.2:

“Before the commencement of employment an employer will inform each employee of the terms of their engagement and their type of employment.”

3. Clause 6.5(a) Casual employees: the subclause says,

“A casual employee is to be employed by the hour and the employment of

¹s.156 - 4 Yearly Review of modern awards - group 2 awards (AM2014/198 and others); Amended Directions (Justice Ross) (6 May 2015)

² [2014] FWCFB 9412

³ [2015] FWCFB 4658

a casual employee may be terminated at any time” (our emphasis).

4. The underlined terms should not appear in the subclause, as there are a number of exceptions to a casual employee being terminated at any time. Moreover, most modern awards do not contain the words “may be terminated at any time” when describing casual employees. Therefore, we propose that subclause 6.5(a) of the exposure draft be deleted and replaced with,

“A casual employee is an employee who is engaged as a casual employee and paid by the hour”.

5. Clause 6.6 casual conversion to full-time or part-time employment: This clause is subject to a common claim by the ACTU.
6. Clause 13.2 Penalties and Overtime –Overtime and penalty rates: The current clause at 20.2 says

“An employee required to work on a Sunday must be paid for all such work at 200% of the relevant minimum wage per hour for a minimum of three hours”.

7. On the other hand the proposed clause at 13.2 has omitted the term relevant (underlined above). Without the term “relevant” the clause can be interpreted as 200% of the minimum wage in the award and not the minimum wage for an employee’s specific classification level. Therefore we submit that the current wording for the clause be retained.
8. Clause 14.4 Requirement to take leave: There is a typographical error in the title of the clause, as it states “*Requirement to take lave*”. The underlined word should instead say, “leave.” To maintain consistency with the rest of the clause, we further submit that the title should be amended to state: “Requirement to take annual leave”.
9. Schedule A—Summary of Hourly Rates of Pay- The schedule contains ordinary hourly rate and penalty rates table at A.1.1 for full time and part time employees. It also contains a table at A.1.2 with overtime rates for full-time and part-time employees. However, for casual employees at A.2 it only contains a table with casual employees’ ordinary hourly rates. There are no additional tables like the tables for full-time and part-time employees at A.1.1 and A.1.2 to capture penalty rates and overtime rates that a casual employee would be entitled to. Accordingly, we submit that additional tables should be inserted in the award to show the penalty rates and overtime rates that casual employees are entitled to.



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Date 15 July 2015