

Tony Sheldon National Secretary

4 February 2015

Fair Work Commission
80 William Street
EAST SYDNEY 2010


By email: amod@fwc.gov.au

Dear Associate

AM2014/208 –Passenger Vehicle Transportation Award

Please find attached submission from the Transport Workers' Union of Australia on the Exposure Draft of the above award published on 22 December 2014.

Yours sincerely


Wendy Carr
Head of Legal
Transport Workers' Union

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/208 – *Passenger Vehicle Transportation Award*

**SUBMISSIONS OF THE TRANSPORT WORKERS' UNION OF AUSTRALIA
ON THE EXPOSURE DRAFT**

Background

1. This outline of submissions has been prepared by the Transport Workers' Union of Australia (**TWU**) in response to the Exposure Draft of the proposed *Road Transport and Distribution Award 2014* as published by the Fair Work Commission (**FWC**) on 22 December 2014.
2. The TWU reserves its position in relation to the changes proposed by relevant parties set out in the Revised Summary of Proposed Variations published by the FWC on 8 December 2014.

Clause 6.4(e), (f) and (h) – Part-time employment:

3. The TWU submits that consequential to the changes proposed in clause 6.4(a), **clause 6.4(e)** should be amended to read as follows: *“Additional hours to those specified in clause 6.4(b) may be offered ...”*. The existing clause, 10.4(b), was split into two sub-clauses. The new clause has split the provision into four sub-clauses that have not been incorporated into proposed 6.4(e).
4. Further, proposed **clause 6.4(f)** should be amended by deleting the reference to 6.4(b)(i) and replacing it with 6.4(b) for the reasons outlined above.
5. **Clause 6.4(h)** also makes reference to 6.4(b)(i) which should be amended to read 6.4(b).
6. **Clause 6.4(h)** also includes the provision that *all time worked in excess of the agreed hours referred to in clause 6.4(b) and clause 6.4(e) will be paid at the appropriate overtime rate*. However, clause 6.4(e) specifies that *time worked in accordance with this clause will stand alone and count towards the ordinary hours of duty for that week*. There appears to be confusion between the terms.

Clause 6.5 – Casual provisions:

7. The TWU submits that the following provisions do not apply to casual employees:

- Clause 8(c)(i) – Rostered days off
- Clause 15 – Annual leave
- Clause 16 – Personal/Carer's leave
- Clause 17 – Parental Leave
- Clause 18 – Community Service Leave
- Clause 19 – Paid public holidays not worked (clause 19.2)
- Clause 21 – Termination

Clause 6.5(d) – Minimum engagement for casuals

8. The parties have been asked to clarify whether the minimum payment applies to each shift, i.e. two hours 'to school' plus two hours 'from school'. The TWU submits that the minimum two hour payment applies to each of the two engagements, i.e. 'to school' and 'from school' and that the word "engagement" was deliberately chosen rather than the word "shift" to emphasise the difference.

Clause 8.1(a) – Ordinary hours and roster cycles

9. The parties have been asked to consider whether a span of ordinary hours for employees on two-driver operations and others should be specified as per the times in clauses 10.5(a) and 10.5(c). The TWU submits that clauses 10.5(a) and 10.5(c) relate to payment of wages and have no bearing on hours of work. It appears the references provided are incorrect.
10. The TWU reserves its position until this matter is clarified.

Clause 13.1(a) – Penalties and overtime

11. The TWU opposes the proposed wording in clause 13.1(a) as it could be interpreted to mean that the penalty only applies to hours worked outside of the span of ordinary hours.
12. The TWU proposes the reinstatement of existing clause 23.5 which reads as follows: *"All employees who work before 6.00am or after 7.00pm must be paid an additional 15% of their base rate of pay for each hour worked."*

Clause 13.2 – Employees on two-driver operations

13. The parties have been asked to comment on the application of this clause in relation to payment for work performed on public holidays. Specifically, is an employee always entitled to be paid an additional 8 hours on a public holiday (even where the employee does not work an eight hour shift) or is

an employee entitled to double time for all hours actually worked on a public holiday.

14. The TWU submits that an employee, when working on a public holiday, is entitled to the applicable penalty rate for the work performed as well as payment for the day. The 'payment for the day' has historically been a separate component and has not been included as a penalty. A departure from the current arrangement would result in a diminished entitlement for those employees working less than 8 hours.
15. In reviewing this clause an anomaly has arisen in relation to the pay entitlement for an employee on a two-driver operation working on a Christmas Day that falls on a Sunday.

E.3.3 – Coverage

16. The TWU makes no submission in relation to this matter.

Traineeships

17. The TWU makes no submission in relation to this matter.

Therese Walton
National Industrial Officer
Transport Workers' Union of Australia

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