

**Tony Sheldon National Secretary**

### 4 Yearly Review of Modern Awards

**Matter No: AM2014/208**

### *Passenger Vehicle Transportation Award (2010)*

**Submissions on the technical and drafting issues related to the exposure draft and outline of submissions in relation to substantive variations.**

### Introduction

1. The Transport Workers' Union of Australia (TWU) refers to the Amended Directions issued by the Fair Work Commission on 6 May 2015 in relation to Group 2 Awards. The TWU makes the following submissions in relation to the technical and drafting issues related to the exposure draft of the *Passenger Vehicle and Transportation Award 2010* (PVT Award) and provides an outline of submissions in relation to substantive claims sought by the TWU.

### **EXPOSURE DRAFT**

2. We refer to our submissions on the exposure draft dated 4 February 2015. We rely on those submissions but depart from them as set out below.

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

3. At paragraphs 3 to 6 of the submissions the TWU made comments in relation to the operation of part-time employment, in particular the splitting of the sub-clause relating to hours of work.

The TWU agrees with the Australian Industry Group (AIG) in their submissions on the exposure draft dated 4 February 2015 at paragraphs 6.4 and 6.4 and in their reply submissions dated 4 March 2015 at paragraphs 45 to 49. The appropriate cross-reference in clauses 6.4(e), 6.4(f) and 6.4(h) should be to 6.4(b)(i) – (iii).

At paragraph 6 the TWU made submissions that there was confusion between the terms of 6.4(e) and 6.4(h). We agree with the AIG that the provisions accord with the current clauses 10.4(i) and 10.4(c).

## Clause 13.2 – Employees on two-driver operations

4. The TWU made submissions at paragraph 15 that there was an anomaly in relation to the pay entitlement for an employee on a two-driver operation working on a Christmas Day that falls on a Sunday. The TWU does not press this submission.

## SUBSTANTIVE CLAIMS

5. We refer to our submissions dated 24 November 2014. The TWU proposed a number of variations as set out below. Discussions have taken place between the TWU and the Australian Public Transport Industrial Association (APTIA) in an attempt to narrow the issues. A conference was also held before Deputy President Sams on 4 May 2015. The issues have been narrowed and the variations the TWU now wish to pursue are set out below.

## Clause 10.5 – Casual Employment

6. The TWU proposes to vary the provisions relating to the minimum engagement of casual employees solely engaged for the purpose of transporting school children.
7. The issue of minimum engagements for casual school bus drivers was identified by the Fair Work Ombudsman (FWO) in their correspondence to His Honour Justice Ian Ross dated 24 November 2014.
8. The FWO attached a table referring to specific award provisions within the Group 2 Awards. At Item 17 the FWO raised a query in relation to whether a casual employee engaged to collect school children in the morning and then again in the afternoon is entitled to be paid a minimum of two hours for each run.
9. The same query was raised by the Fair Work Commission (FWC) in the exposure draft of the PVT Award uploaded onto the FWC's website on 18 December 2014. After clause 6.5(d)(ii) of the exposure draft, parties are asked to clarify whether the minimum payment applies to each shift i.e. two hours 'to school' plus two hours 'from school'.
10. During the Transitional Review both the TWU and APTIA sought variations to address the issue of minimum engagements for school bus drivers engaged solely for the transportation of school children. In her decision<sup>1</sup> Commissioner Bissett dismissed both applications. In dismissing APTIA's application Commissioner Bissett did not consider it had met the requirement of the Transitional Act.<sup>2</sup> The TWU's application was dismissed on the basis that the proposed variation was not appropriate for the PVT Award.<sup>3</sup>

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<sup>1</sup> [2013] FWC 3221

<sup>2</sup> Ibid at [31]

<sup>3</sup> Ibid at [32]

11. The TWU now seeks to vary the provisions to make clear that the award requires a minimum payment of two hours per engagement, that is, two hours for each start in the morning and afternoon. The variation sought is as set out below.

Delete existing subclause 10.5(d) and replace as follows

“A casual employee is to be paid a minimum payment of three hours pay for each shift”.

Insert a new subclause 10.5(e) as follows:

“A casual employee solely engaged for the purpose of transportation of school children to and from school may be rostered to perform two separate engagements per day with a minimum payment of two hours for each separate engagement”.

12. The TWU has had a number of discussions with APTIA and it is our understanding APTIA supports the TWU's interpretation of the provisions relating to the minimum engagement provisions for casual school bus drivers engaged solely for the transportation of school children.
13. Should there be an agreed position the TWU submits that the variation does not require a specially constituted Full Bench and can be dealt with before the Full Bench Hearing for the Group 2 Awards listed on 7 and 8 October 2015.

### **Clause 15.2(e) – Medical Examination Allowance**

14. The TWU seeks to vary the clause relating to the medical examination allowance. The current clause allows an employer to require both a medical examination upon engagement, and thereafter at the discretion of the employer. It also allows all medical evidence to be made available to the employer on request.
15. It is curious that such a provision is purportedly expressed as an allowance yet allows an employer to unilaterally request a medical examination of an employee not only upon engagement but also thereafter at their discretion.
16. The TWU submits that such provisions are unnecessary and should be restricted to payment of the relevant allowance. APTIA agree that the clause should be varied however either party has proposed no clause. The TWU seeks to vary the clause as set out below.

Delete existing subclause 15.2(e) and replace as follows:

#### **“(e) Medical allowance**

- (i) Where an employer requires an employee to submit to a medical examination the employee will be paid an allowance which is equal to

the difference between the cost of the medical examination and the cost of the Medicare rebate.

- (ii) Where an employee is required to undertake a medical examination for the purposes of obtaining a relevant licence, the employee will be paid an allowance which is equal to the difference between the cost of the medical examination and the Medicare rebate, provided that the employer determines the certified medical practitioner who is to perform the examination.”

- 17. The TWU does not propose to call any evidence and submits that the variation does not require a specially constituted Full Bench and can be dealt with before the Full Bench Hearing for the Group 2 Awards listed on 7 and 8 October 2015.

### **Clause 21 – Ordinary Hours of Work and Rostering**

- 18. In the exposure draft after clause 8.1(a), the FWC asked parties 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). These clauses bear no relationship to a span of hours as they relate to payment of wages.
- 19. However, the TWU submits that there should be provision for a span of hours and seeks a variation to insert a span of hours between 6.00 am and 7.00 pm.

### **Clause 23.5 – Overtime and Penalty Rates**

- 20. In the absence of a specified span of hours, employees who work before 6.00 am and 7.00 pm must be paid an additional 15% of their base rate of pay for each hour worked.
- 21. The TWU seeks to vary the clause to make provision for the payment of 15% to be paid on the base rate of pay for all ordinary hours worked in a shift.
- 22. The TWU expects some employer parties will oppose the change. It is envisaged that witness evidence will be submitted in relation to different practices across the industry. The TWU is of the view that this is a claim that should be referred to a specially constituted Full Bench.



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